

(b) Prepare and maintain on its premises books and records in such a manner as to facilitate reconciliation with certified statements prepared from them.

(c) Maintain in its books and records documentation supporting its certified statement for a period no less than 5 years following the date of each certified statement, unless the bank shall have requested in writing, and the Corporation shall have granted to the bank, written permission to dispose of such documentation prior to the expiration of 5 years.

(d) Make all records and any supporting documentation available, without limitation, to Corporation officials upon request.

PART 1411—RULES OF PRACTICE AND PROCEDURE

AUTHORITY: Secs. 5.58(10), 5.65(c) and (d) of the Farm Credit Act (12 U.S.C. 2277a–7(10), 2277a–14(c) and (d)).

Subpart A—Rules and Procedures for Assessment and Collection of Civil Money Penalties

§1411.1 Inflation adjustment of civil money penalties for failure to file a certified statement, pay any premium required or obtain approval before employment of persons convicted of criminal offenses.

A civil money penalty imposed pursuant to section 5.65(c) or (d) of the Act for a violation occurring on or after October 23, 1996 shall not exceed \$110 per day for each day the violation continues.

[61 FR 55079, Oct. 24, 1996]

CHAPTER XV—THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

SUBCHAPTER A—GENERAL PROVISIONS

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SUBCHAPTER A—GENERAL PROVISIONS

PART 1502—AVAILABILITY OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

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AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1441a(a) (2) and (13).

SOURCE: 57 FR 53240, Nov. 9, 1992, unless otherwise noted.

§ 1502.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued by the Thrift Depositor Protection Oversight Board (Board) pursuant to 5 U.S.C. 552 and 12 U.S.C. 1441a(a) (2) and (13).

(b) *Purpose*. This part sets forth the kinds of information made available to the public and the rules and procedures for obtaining documents and records of the Board.

(c) *Scope*. This part applies to the information and records of the Board, an instrumentality of the United States separate and distinct from the Resolution Trust Corporation (RTC); and this part does not govern or set forth procedures for the implementation of the Freedom of Information Act by the RTC. This part explains:

(1) The kinds of information which the Board is required to publish in the FEDERAL REGISTER;

(2) The kinds of records made available to the public on request;

(3) The kinds of information made exempt from disclosure;

(4) The procedures for obtaining records and for processing requests;

(5) The schedule of fees for processing requests; and

(6) The procedures for appealing denials of requests for information.

§ 1502.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(b) *Appeal* means the administrative appeal by a requester of an adverse initial determination on a request for records, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(c) *Business information* means trade secrets and commercial or financial information provided to the Board that arguably is exempt from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(d) *Denial* means a denial, based upon an exemption of the Freedom of Information Act, of a request for records, or a denial of a fee waiver request.

(e) *Director* means the Board's Vice President for Public Affairs or, in case of the absence or a vacancy in the office of the Vice President, the head or acting head of the Board's Office of Public Affairs.

(f) *President* means the President of the Board.

(g) *Request*, except for the purposes of § 1502.10, means any request for Board records made pursuant to 5 U.S.C. 552(a)(3).

(h) *Requester*, except for the purposes of § 1502.10, means any person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(3).

(i) *Submitter* means any person or entity that provides business information to the Board.

§ 1502.3 Published information.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraph (b) of this section, pursuant to 5 U.S.C. 552(a)(1) the Board shall separately state and currently publish in the FEDERAL REGISTER for the guidance of the public:

(1) Descriptions of its organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which such forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board; and

(5) Each amendment, revision, or repeal of the foregoing.

(b) Except to the extent that a person has actual and timely notice of the terms thereof, such person is not required in any matter to resort to, or be adversely affected by, a matter required to be published pursuant to paragraph (a) of this section and not so published. For the purposes of this section, matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when it is incorporated by reference therein with the approval of the Director of the Federal Register.

§ 1502.4 Public inspection and copying.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraphs (b), (d), and (e) of this section, the Board shall make available for public inspection or copying:

(1) Final opinions of the Board, including concurring and dissenting opinions, as well as orders of the Board, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Board and are not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions of the Board to staff that affect a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Board may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. In each case, however, the justification for the deletion shall be explained in writing.

The Director is authorized to act for the Board in implementing this paragraph.

(c) The Board shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated and required by this section to be made available or published. The Board shall provide copies of such an index on request at a cost not to exceed the direct cost of duplication.

(d) A final order, opinion, statement of policy, interpretation, or staff manual or instruction described in paragraph (a) of this section that affects a member of the public may be relied on, used, or cited as precedent by the Board against a party other than an agency only if such document has been indexed and made available pursuant to this section or the party has actual and timely notice of the terms of the document.

(e) Applications to inspect or copy records of the Board that are made available in accordance with paragraphs (a) and (c) of this section shall be made to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232.

§ 1502.5 Specific requests for records.

(a) Except with respect to the records made available pursuant to § 1502.3 and § 1502.4, and subject to the application of the exemptions in § 1502.11, the Board, upon any request for records that reasonably describes such records and complies with this part, shall make such records promptly available to any person.

(b) Records exempt from disclosure to the public pursuant to 5 U.S.C. 552(b), as described in § 1502.11, may be released if the President or the Board's General Counsel determines that disclosure is in the public interest, provided that such disclosure is not prohibited by statute, regulation, or order.

§ 1502.6 Request procedures.

(a) *Written requests.* Except as provided in paragraph (d) of this section, each request for Board records shall be made in writing, signed by or on behalf of the person making the request, and

state that the request is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this part. Requests shall be submitted to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232. The Director is authorized to act for the Board under this section.

(b) *Description of records and form of request.* (1) Each request for records must describe the records sought in reasonably sufficient detail to enable a Board employee who is familiar with the subject matter to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of the Board's operations. Whenever possible, a request should include specific information about each record sought, such as the date, title, name, author, recipients, and subject matter of the record. If a request does not reasonably describe the records sought, the requester shall be advised what additional information is needed or why the request is insufficient. The requester shall also be given an opportunity to confer with Board staff with the objective of reformulating the request in a manner that will meet the requirements of this section.

(2) Both the envelope and the written request should be clearly marked "Freedom of Information Act Request." Each request shall include:

(i) The name and address of the person filing the request, and the telephone number, if any, at which the requester can be reached during normal business hours;

(ii) The title of any case in litigation to which the request relates, the court, and the nature of the case;

(iii) Whether the requested information is intended for commercial use, and whether the requester is an educational institution, noncommercial scientific institution, or news media representative, employing the definitions in § 1502.10(a);

(iv) A statement indicating the requester's wish to have a copy of a record; or a statement that the re-

quester wishes to inspect a record before copying; and

(v) A statement agreeing to pay applicable fees or a fee waiver request that complies with § 1502.10.

(c) *Returned requests.* The Board need not accept or process a request that is not a request for identifiable records, does not comply with the requirements of paragraphs (a) and (b) of this section, or can be complied with only by designing an information retrieval system. The Board may return such a request, specifying the defects, and the requester may submit a corrected request, which shall be treated as a new request. If a request would require the generation of new documents or files or the creation or editing of a database, it will be returned as a request for which there are no responsive Board records.

(d) *Oral requests.* The Board may honor an oral request for Board records, but if the requester is dissatisfied with the Board's response and wishes to obtain further consideration, the requester must submit a written request, which shall be treated as an initial request.

(e) *Advance payment of fees.* Whenever the Board requires payment of any fee pursuant to § 1502.10(h) (1) or (2), the requester shall promptly remit the required payment to the Board as a condition to further processing of the request.

(f) *Date of receipt.* A request shall be considered as received for the purposes of this part when:

(1) A request that satisfies the requirements of paragraphs (a) and (b) of this section is received by the Office of Public Affairs; and

(2) If payment has been required under paragraph (e) of this section, payment is received from the requester.

§ 1502.7 Responses to requests.

(a) *Authority to grant or deny requests.* The Director is authorized to grant or deny any request for a Board record and to act for the Board under this section.

(b) *Determination.* Pursuant to 5 U.S.C. 552(a)(6)(A)(i), the Director's determination whether or not to comply with a request shall be made within ten days (excluding Saturdays, Sundays,

and legal public holidays) after the date of receipt of the request unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(c) *Notice of determination.* The Director shall immediately notify the requester in writing of the determination whether or not the Board will comply with a request. If a request is granted in whole or in part, the notice shall describe the manner in which a record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place, and any fees to be charged in accordance with § 1502.10. If a request is denied in whole or in part, the notice shall include a brief statement of the reason or reasons for the denial, including the exemption or exemptions relied upon, and inform the requester of the requester's right to appeal to the Board pursuant to § 1502.9.

(d) *Referrals.* To the extent that a request is for records that were created by or obtained from the RTC or another agency, the Board may refer the request to the RTC or such other agency for determination and a direct response to the requester. The Board shall promptly give written notice of such referral to the requester.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified or that may be eligible for classification by another agency under the provisions of an Executive Order concerning the classification of records, the Board shall refer the responsibility for responding to the request to the agency that classified the information or should consider classifying the information.

(f) *Unlocated or destroyed records.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Director shall notify the requester in writing.

§ 1502.8 Business information.

(a) *General.* Business information provided to the Board by a submitter shall not be disclosed pursuant to a Freedom

of Information Act request except in accordance with this section. The President, the Director, or such other officer as the Board may designate, with the advice of the General Counsel to the Board, may act for the Board under this section.

(b) *Submission and request for confidential treatment.* (1) Any submitter of information to the Board who desires that it be afforded confidential treatment pursuant to 5 U.S.C. 552(b)(4) shall file an application for confidential treatment with the Board at the time the information is submitted or within a reasonable time thereafter.

(2) Each application for confidential treatment shall state in reasonable detail the facts and arguments supporting the application and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment.

(3) The submitter should clearly designate as "Confidential" all material for which confidential treatment is desired and separate it from other information in the submission.

(4) Applications for confidential treatment of any documents shall be considered in connection with a request for access to the documents. At their discretion, the Board, the President, or the Director may approve or disapprove an application for confidential treatment prior to a request for access to the documents.

(c) *Notice to submitters.* Except as provided in paragraph (h) of this section and to the extent permitted by law, the Board shall give prompt written notice to a submitter of a request or appeal encompassing business information provided to the Board by the submitter if:

(1) The submitter has designated the information as confidential pursuant to paragraph (b) of this section within ten years prior to the date of the request; or

(2) The Board has reason to believe that disclosure of the information may reasonably be expected to cause substantial competitive harm to the submitter.

(d) *Opportunity to object.* Through the notice described in paragraph (c) of this section, the Board shall afford the submitter or its designee a reasonable period of time within which to object to disclosure and state grounds for such objection. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the statement should be supported by a certification by the submitter or an authorized representative of the submitter that the information has been treated as confidential by the submitter and has not been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(e) *Notice to requester.* At the same time that the Board notifies the submitter, the Board shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being notified of the request.

(f) *Notice of intent to disclose.* (1) The Board shall consider carefully a submitter's objections and grounds for nondisclosure prior to deciding whether to disclose business information. If the Board decides to disclose business information over the objection of a submitter, the Board shall forward to the submitter a written notice, which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified disclosure date, and a copy of the notice shall be forwarded to the requester at the same time.

(g) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the

Board shall promptly notify the submitter.

(h) *Exceptions to notice requirements.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The Board determines that the information shall not be disclosed;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, the Board shall provide the submitter with written notice of any final administrative decision to disclose information within a reasonable number of days prior to a specified disclosure date.

§ 1502.9 Appeals.

(a) *Appeal to the Board.* When a request or a fee waiver request has been denied in whole or in part, the Board fails to respond to a request within the time limits set forth in the Freedom of Information Act, or the Board responds that records have not been found and the requester deems such response to be an adverse action, the requester may appeal such action to the Board within thirty days of receipt of the notice of denial or response. An appeal to the Board shall be made in writing and shall be addressed to the President, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Both the envelope and the letter of appeal itself should be clearly marked "Freedom of Information Act Appeal."

(b) *Untimely appeals.* The Board may consider an untimely appeal if:

(1) It is accompanied by a written request for leave to file an untimely appeal; and

(2) The President determines, within the President's discretion and for good and substantial cause shown, that the appeal should be considered.

(c) *Action on appeals.* The President or such other officer as the Board may designate, with the advice of the General Counsel, shall act on behalf of the Board on appeals under this section, but no officer who has denied a request or application for a waiver or reduction

in fees shall act on the appeal from that denial. The Board shall make a determination with respect to an appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(d) *Form of action on appeal.* The disposition of an appeal shall be in writing and shall constitute final Board action on the request and appeal. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or in the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified, and the request shall be processed promptly in accordance with the decision on appeal.

§ 1502.10 Fees.

(a) *Definitions.* For the purposes of this section:

(1) *Commercial use* in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or a person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a requester properly belongs in this category, the Board must determine the use to which a requester will put the documents requested. If the Board has reasonable cause to doubt the stated use, or if that use is not clear from the request itself, the Board will seek additional clarification before assigning the request to a specific category.

(2) *Direct costs* means those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request. Direct costs include, for example, the salary of an employee perform-

ing work to respond to a request (the basic rate of pay for the employee plus a factor of 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Overhead expenses, such as the costs of space and heating or lighting the facility in which the records are stored, are not included in direct costs.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. A copy shall be in a form that is reasonably usable by a requester.

(4) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(5) *Fee waiver request* means a request for the waiver or reduction of a fee charged for processing a request.

(6) *News* means information that is about current events or that would be of current interest to the public.

(7) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals, but only in those instances when they can qualify as disseminators of news, who make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid

basis for expecting publication through the organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(9) *Request* means a request for records pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(10) *Requester* means a person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(11) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of the document may be withheld. It also includes processing documents for disclosure, e.g., doing all that is necessary to excise portions and otherwise prepare the document for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(12) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is separate from review.

(b) *General.* (1) The Board's fees for the processing of requests shall recover the direct costs of search, duplication, or review in accordance with the following:

(i) Fees for the processing of requests shall be limited to reasonable standard charges for document search, duplication, and review when records are requested for commercial use.

(ii) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research or by a representative of the news media.

(iii) Fees for other requesters shall be limited to reasonable standard charges for document search and duplication.

(iv) No fee shall be charged if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(v) Fees shall be assessed according to the schedule in paragraph (c) of this section; and all fees so assessed shall be charged to the requester except to the extent that the charging of fees is limited under paragraph (d) of this section or unless a waiver or reduction of fees is granted under paragraph (e) of this section.

(vi) Requests from record subjects for records about themselves, which are filed in Board systems of records, will be charged under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a), which permit fees only for reproduction or duplication of records, subject to the limitation in paragraph (d)(1) of this section.

(2) Except as otherwise specifically provided, the Director is authorized to act for the Board under this section.

(c) *Assessment of fees.* In responding to requests, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (e) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (d) of this section. The Board may assess fees for time spent searching even if records cannot be located or if records located are subsequently determined to be entirely exempt from disclosure.

(ii) The fee assessed for other than computer searches shall be \$3.25 for each quarter hour spent by clerical personnel in searching for and retrieving a requested record. If a search and retrieval requires the use of professional or managerial personnel, the fee assessed for other than computer searches shall be \$7.00 for each quarter hour spent by such professional or managerial personnel.

(iii) For computer searches that may be undertaken through the use of existing programming, the requester shall be assessed the actual direct costs of the search. This shall include the cost of operating a processing unit for that portion of operating time that is directly attributable to searching for records responsive to the request as

well as the costs of operator/programmer salary apportionable to the search. The Board is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record, the fee shall be \$0.10 per page. For copies produced by computer, such as tapes or printouts, a requester shall be charged the actual direct costs of such copy, including operator time. For other methods of duplication, requesters shall be charged the actual direct costs of duplicating a record.

(3) *Review.* (i) Commercial use requesters shall be assessed for review at the initial administrative processing level at the rates set forth in paragraph (c)(1)(ii) of this section.

(ii) No charge shall be assessed for review at the administrative appeal level of an exemption already applied. Records or portions of records withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again, however, to determine the applicability of exemptions not previously considered. The costs of such a subsequent review are assessable at the rates set forth in paragraph (c)(1)(ii) of this section.

(4) *Other services.* Applications for other services and materials that are not required by or subject to the Freedom of Information Act are chargeable at the actual cost to the Board. These include, but are not limited to:

(i) Certifying that records are true copies; and

(ii) Sending records to the requester by special methods such as express mail or messenger.

(5) *Use of private contractors.* The Board, not acting by delegated authority, may authorize contracting with private sector contractors for the services of locating, reproducing, and disseminating records in response to requests if the Board determines that such functions may be performed more efficiently and for less cost through private sector contractors. In such case, a requester shall be charged the actual costs to the Board for the services furnished with respect to the re-

quest, provided, however, that in no event shall the requester be charged more than what the Board would have charged if it had performed such services itself.

(d) *Limitations on charging fees.* Except for requesters seeking records for a commercial use, as defined in paragraph (a)(1) of this section, the Board shall provide without charge:

(1) The first 100 pages of duplication, or its cost equivalent; and

(2) The first two hours of search, or its cost equivalent.

(e) *Waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if the Board determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Board, that:

(i) Disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure is not primarily in the commercial interest of the requester.

(2) In order to determine whether the requirement set forth in paragraph (e)(1)(i) of this section is met, the Board shall consider the following four factors in sequence:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) In order to determine whether the requirement set forth in paragraph (e)(1)(ii) of this section is met, the Board shall consider the following two factors in sequence:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(ii) Whether the magnitude of an identified commercial interest of the

requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) If only a portion of the requested records satisfies the requirements of paragraphs (e)(1)(i) and (e)(1)(ii) of this section, a waiver or reduction shall be granted only as to that portion.

(5) Fee waiver requests shall be considered on a case-by-case basis. A fee waiver request shall address each of the factors listed in paragraphs (e) (2) and (3) of this section as they apply to each request for records.

(6) Normally no charge shall be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(7) In connection with any request by an employee, former employee, or applicant for employment for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived if the total charges (including charges for information provided under the Privacy Act of 1974) are \$50 or less; but the Board, in its discretion, may waive fees in excess of that amount.

(8) Appeals from denials of fee waiver requests shall be decided in accordance with §1509.2(a) and the criteria set forth in paragraph (e)(1) of this section by an official authorized to decide appeals from denials of requests for records. Such appeals shall be addressed in writing to the Board within thirty days after receipt of a denial of a fee waiver request; both the envelope and the letter of appeal itself should be clearly marked "Fee Waiver Request Appeal."

(f) *Notice of anticipated fees in excess of \$25.00.* If the board determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, the Board shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has agreed in advance to pay fees as high as those anticipated. If a requester is notified that actual or estimated fees may exceed \$25.00, the request shall be deemed not to have been received until the requester has agreed to pay the antici-

pated total fee. A notice to the requester pursuant to this paragraph (f) shall offer the opportunity to confer with Board staff for the purpose of reformulating the request to meet the requester's needs at a lower cost.

(g) *Aggregating requests.* If the Board reasonably believes that a requester or group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. It is considered reasonable for the Board to presume that multiple requests for clearly related documents made within a thirty day period have been made in order to evade fees. Multiple requests for unrelated documents will not be aggregated.

(h) *Advance payments.* (1) If the Board estimates that a total fee to be assessed under this section is likely to exceed \$250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, unless it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) If a requester has previously failed to pay a records access fee within thirty days of the date of billing, the Board may require the requester to pay the full amount owed, plus any applicable interest, as provided for in paragraph (i) of this section, and to make an advance payment of the full amount of any estimated fee before the Board begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (h)(1) and (2) of this section, the Board shall not require the requester to make an advance payment. Payment owed for work already completed is not an advance payment.

(4) If the Board requires a payment under paragraph (h)(1) or (2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) for the processing of an initial request or an appeal, and the permissible extensions of such limits, shall be deemed not to

begin to run until the Board has received payment of the assessed fee.

(i) *Form of payment.* Payment of fees shall be made by check or money order payable to the Treasurer of the United States. The payment shall be forwarded to the Board.

(j) *Other statutes specifically providing for fees.* The fee schedule in this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records.

§ 1502.11 Exemptions.

(a) *General.* Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552 and this part do not apply to certain matters which are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Board;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Board, including, but not limited to, records of deliberations of the Board other than meetings held pursuant to 12 U.S.C. 1441a(a)(10);

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished only by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Other law enforcement records.* The Board may also withhold disclosure of records pursuant to 5 U.S.C. 552(c).

(c) *Segregable portions of record.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. Reasonably segregable nonexempt portions of a record are those:

(1) Whose meaning is not distorted by deletion;

(2) That are sufficient to be intelligible and useful to the requester; and

(3) From which a skillful and knowledgeable person could not reconstruct any exempt information.

(d) *Computer information.* Information stored in a computer that can be segregated only by creating an information retrieval program is not considered reasonably segregable.

§ 1502.12 Preservation of records.

The Board shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Freedom of Information Act.

PART 1503—PRIVACY ACT PROCEDURES

Sec.

1503.1 Purpose and scope.

1503.2 Definitions.

1503.3 Procedures for determining if an individual's records are contained in a system of records.

1503.4 Requests for disclosure of records.

1503.5 Disclosure of requested records.

1503.6 Special procedure: Medical records.

1503.7 Requests for amendment of records.

1503.8 Board review of requests for amendment of records.

1503.9 Appeal of initial adverse determinations on access or amendment.

1503.10 Disclosure of a record to a person other than the individual to whom it pertains.

1503.11 Fees.

1503.12 Exception.

AUTHORITY: 5 U.S.C. 552a; 12 U.S.C. 1441a(a)(2); 12 U.S.C. 1441a(a)(13).

SOURCE: 57 FR 61252, Dec. 24, 1992, unless otherwise noted.

§ 1503.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the provisions of the Privacy Act with regard to access to and review of personal information in systems of records maintained by the Board.

§ 1503.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Board* means the Thrift Depositor Protection Oversight Board.

(b) *Business day* means any day other than a Saturday, Sunday, or legal Federal public holiday.

(c) *Guardian* means the parent of a minor individual or the legal guardian of an individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* means maintain, collect, use, disseminate, or control.

(f) *Privacy Act* means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(g) *Privacy Officer* means an officer or employee of the Board designated by the President of the Board to implement the Privacy Act in accordance with this part.

(h) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(i) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected or created.

(j) *System of records* means a group of any records under the control of the Board from which information is retrievable by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

(k) *Vice President* means a Vice President of the Board designated by the President of the Board to review actions and determinations of the Privacy Officer and to take action on behalf of the Board with respect to appeals under this part.

§ 1503.3 Procedures for determining if an individual's records are contained in a system of records.

(a) An individual or his or her guardian desiring to know if a specific system of records maintained by the Board contains a record pertaining to

such individual shall address an inquiry in writing to the Privacy Officer, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Notwithstanding the preceding sentence, an individual employed by the Board is not required while so employed to make such inquiry in writing. The written inquiry shall:

(1) Identify the system of records maintained by the Board or reasonably describe the type of record in sufficient detail to permit the Privacy Officer to identify an existing system of records; and

(2) Identify the individual making the inquiry or on whose behalf the inquiry is made. The Privacy Officer may require such information concerning the identity or authority of an individual or guardian as the Privacy Officer deems appropriate, as provided under § 1503.4(b).

(b) The Privacy Officer shall ordinarily inform an inquirer whether a system of records described in the written inquiry contains a record pertaining to an individual within ten business days following receipt of the inquiry. If the Privacy Officer is unable to respond to a written inquiry within ten business days following its receipt, the Privacy Officer shall inform the inquirer of the reasons for delay and the anticipated date of response.

(c) An affirmative response shall describe or reference the procedures to be followed in order to gain access to a record.

§ 1503.4 Requests for disclosure of records.

(a) Requests by or on behalf of an individual for access to records pertaining to such individual in a system of records shall be submitted in writing to the Privacy Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, in accordance with the requirements of paragraph (b) of this section. The written request may be mailed, or presented in person on a business day between 9 a.m. and 5 p.m. to the Privacy Officer at the offices of the Board specified in the preceding sentence. The written request and the envelope (if the request is mailed) shall be clearly marked "Privacy Act Request." Not-

withstanding the first sentence of this paragraph (a), an individual employed by the Board is not required while so employed to request access to his or her records in writing.

(b) Each written request shall be dated and signed and shall include:

(1) The name, address, and telephone number of the person signing the request;

(2) The name, address, and telephone number of the individual to whom a requested record pertains, if such individual is not the person signing the request, with evidence of authority to act on behalf of the record subject;

(3) Verification of identity, by providing a document, such as a photocopy of a driver's license, bearing the signature of the person signing the request.

(4) Certified or authenticated copies of documents establishing parentage or guardianship if the request is made by the guardian of the individual to whom the requested record pertains;

(5) A statement that the individual whose records are requested is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(6) The name and location of the system of records in which the requested records are contained.

(c) An individual who appears in person at the offices of the Board to submit a written request for access to his or her records shall present two forms of identification, such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) Unless a requested record is publicly available pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Officer may require certification by a notary public attesting to the identity of a requesting individual or other evidence establishing the identity of the requesting individual as a condition of making available or releasing a copy of a record pertaining to such individual. If a request is made by a guardian or another person acting on behalf of the individual, the Privacy Officer may require appropriate evidence of authority to act on behalf of the individual whose records are requested.

(e) Requests by or on behalf of an individual for an accounting made pursuant to 5 U.S.C. 552a(c) of previous disclosures of records pertaining to such individual in a system of records shall also be made and processed in accordance with paragraphs (a) through (d) of this section.

§ 1503.5 Disclosure of requested records.

(a) The Privacy Officer shall ordinarily respond to a request for access to records or an accounting of previous disclosures within ten business days following receipt of a request. If the Privacy Officer is unable to respond within ten business days following receipt of a request, the Privacy Officer shall inform the requester within ten business days following receipt of a request of the reasons for delay and the anticipated date of response.

(b) The Privacy Officer, in responding to a request for access to records, shall inform the requester:

- (1) Whether or not a requested record is maintained by the Board in a system of records;
- (2) Whether or not access will be granted;
- (3) If access is granted, of a reasonable time, place, and procedure for providing access to and copies of the requested records;
- (4) Of any fees that may be required pursuant to § 1503.11;
- (5) Of any additional information that may be required as a condition of granting access; and
- (6) If access to a record is denied, the reason or reasons for denial and the procedures for obtaining a review of such denial.

(c) The requester of records may be accompanied in the inspection and discussion of such records by a person chosen by the requester, provided that the requester submits a written and signed statement authorizing the presence of such person during such inspection and discussion.

§ 1503.6 Special procedure: Medical records.

Medical records requested pursuant to § 1503.4 will be disclosed to the requester unless the disclosure of such records directly to the requester, in the

judgment of the Privacy Officer, could have an adverse effect upon the requester. In such case, such information will be forwarded to a licensed physician named by the requester.

§ 1503.7 Requests for amendment of records.

(a) An individual or his or her guardian may request amendment of records pertaining to such individual in accordance with the requirements of this section. Such request shall be in writing and shall be submitted to the Privacy Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW, Washington, DC 20232, by mail, or in person on a business day between 9 a.m. and 5 p.m. The written request and the envelope (if the request is mailed) shall be clearly marked "Privacy Act Record Amendment."

(b) Each request shall be dated and signed and shall:

- (1) Identify the system of records containing the record for which amendment or connection is requested;
- (2) Specify the record requested to be amended or corrected;
- (3) Specify requested additions and deletions;
- (4) State the reasons for each requested amendment or correction, with appropriate supporting information or documentation; and
- (5) Identify the requester, referring specifically to any previous written request for access submitted pursuant to § 1503.4 or providing the documentation concerning the individual and his or her guardian required by § 1503.4(b).

(c) An individual who appears in person at the offices of the Board to submit a written request for amendment or correction of his or her records shall present two forms of identification such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) The Privacy Officer may require additional evidence of the identity or authority of the requester.

(e) This section does not authorize or permit collateral attack upon the results or findings of a previous judicial or administrative proceeding.

§ 1503.8 Board review of requests for amendment of records.

(a) The Privacy Officer shall acknowledge in writing the receipt of a request made pursuant to § 1503.7 within two business days of such receipt. Such acknowledgment may include a request for additional information necessary for a decision concerning the requested amendment of a record.

(b) The Privacy Officer shall promptly review each request made pursuant to § 1503.7 in light of relevant criteria of the Privacy Act, including, but not limited to, 5 U.S.C. 552a(e) (1) and (5).

(c) Upon completion of such review, the Privacy Officer shall direct amendment of the record as requested, giving notice of such action to the requester, or immediately notify the requester that the request for amendment of a record is denied. If an accounting of disclosures of such record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in such accounting shall be informed of any amendment.

(d) If a request made pursuant to § 1503.7 is denied in whole or in part, the Privacy Officer shall inform the requester of the reasons for such denial, the procedures for obtaining a review of such denial, and the name and business address of the Vice President.

§ 1503.9 Appeal of initial adverse determinations on access or amendment.

(a) A requester may appeal the denial of a request made pursuant to § 1503.4 or § 1503.7 in accordance with the provisions of this section.

(b) An appeal shall be submitted in writing to the Secretary, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, within 60 days following issuance of notice of a denial. The written appeal and the envelope in which it is mailed shall be clearly marked "Privacy Act Appeal." The written appeal shall be dated and signed and shall:

(1) State clearly in summary form the request that was denied, attaching a copy of the Privacy Officer's notice of denial or giving the date of such notice; and

(2) Set forth the reasons why the requester believes that access to a record

should be granted or a record should be amended.

(c) The Vice President shall complete review of an appeal and, with the advice of the General Counsel to the Board, make a final determination within 30 business days following the date on which review is requested unless, for good cause shown, the President of the Board extends such period. A requester shall be promptly notified of an extension of the review period and the reasons therefor. The Vice President shall promptly give notice to the requester of the determination to grant access to a record, to amend a record as requested, or to affirm an initial adverse determination.

(d) If on appeal a request for access to a record made pursuant to § 1503.4 is granted, the Vice President's notice shall provide the information described in § 1503.5(b) (3) and (4). If the initial denial of such request is affirmed, the Vice President's notice shall include a statement of the reasons for such determination and advise the requester of the provisions of the Privacy Act concerning judicial review of such determination, as set forth in 5 U.S.C. 552a(g).

(e)(1) If on appeal a request for amendment of a record made pursuant to § 1503.7 is granted, the Vice President shall direct amendment of the record as requested, and the Vice President's notice shall so inform the requester. If an accounting of disclosures of the record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in the accounting shall be informed of the amendment.

(2) If the initial adverse determination of a request pursuant to § 1503.7 is affirmed, the Vice President's notice shall:

(i) Confirm, amplify, or modify the statement of reasons given by the Privacy Officer for denial of the request;

(ii) Advise the requester of the right to file with the Board a concise statement of the requester's reasons for disagreeing with the determination not to amend a record in accordance with the request, as provided by 5 U.S.C. 552a(d)(3); and

(iii) Advise the requester of the provisions of the Privacy Act concerning

judicial review of the determination, as set forth in 5 U.S.C. 552a(g).

(f) If a requester seeking amendment of a record ("disputed record") files a concise statement of disagreement pursuant to 5 U.S.C. 552a(d)(3) and paragraph (e)(2)(ii) of this section, a copy of such statement shall be provided by the Board to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement. If an accounting of previous disclosures of such disputed record has been made pursuant to 5 U.S.C. 552a(c), a notation of the disagreement shall be provided by the Board to any person or agency listed in such accounting. If deemed appropriate by the President of the Board, a concise statement of the Board's reasons for not amending the disputed record shall also be provided to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement.

§ 1503.10 Disclosure of a record to a person other than the individual to whom it pertains.

(a) Except as provided in paragraph (b) of this section, the Board shall not disclose by any means of communication any record contained in a system of records to any person or agency except with the prior written consent of the individual to whom the record pertains or of his or her guardian.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to disclosure:

(1) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act, 5 U.S.C. 552;

(3) For a routine use;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(5) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, the record to be

transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 1503.11 Fees.

(a) Records disclosed to requesters pursuant to the Privacy Act and this part shall be duplicated at a cost of \$0.10 per page, except as follows:

(1) If the Privacy Officer determines that access to a record may be provided only by furnishing a copy of the record, no fee will be charged for the first copy of the record or any portion thereof;

(2) If duplication fees do not exceed \$2 for one request, the fees will be waived; and

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(3) If the Privacy Officer determines it to be in the public interest, the Privacy Officer may waive any duplication fees.

(b) Requesters will not be charged for search or review of a record.

(c) If it is anticipated that duplication fees will exceed \$25, the requester shall be notified promptly, and processing of the request shall be suspended until an agreement to pay the requested fees has been provided by the requester.

§ 1503.12 Exception.

Nothing in this part shall allow access to any information compiled in reasonable anticipation of a civil action or proceeding.

PART 1505—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

1505.40 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

AUTHORITY: 12 U.S.C. 1441a(a)(13) and (p)(2); 5 CFR part 735.

SOURCE: 55 FR 5358, Feb. 14, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 1505.1 Purpose and scope.

(a) This part establishes the standards of responsibility and conduct for all employees of the Oversight Board.

(b) The following subject areas are covered:

(1) Subpart A of this part provides the definitions to be applied in implementing these standards and sets forth

general procedures on employee responsibilities, counseling, distribution of the regulation, sanctions, and remedial actions;

(2) Subpart B of this part sets forth basic conflict of interest rules on receiving gifts, entertainment, favors, loans, and travel expenses and rules of conduct on speaking, publications, employment of relatives, use of Board and RTC property, and indebtedness and gambling applicable to all employees;

(3) Subpart C of this part contains rules on credit, investments, purchase of Oversight Board and Resolution Trust Corporation property and assets in conservatorship or receivership, outside employment, and employment of family members applicable to all employees;

(4) Subpart D of this part requires reports of financial interests and employment;

(5) Subpart E of this part sets forth rules on representing others before the Oversight Board and Resolution Trust Corporation;

(6) Subpart F of this part prescribes rules for special government employees; and

(7) Subpart G of this part requires the Resolution Trust Corporation to prescribe policies and procedures setting forth minimum standards of competency, experience, integrity, and fitness for its employees.

§ 1505.2 Definitions.

For the purposes of this part:

(a) *Affiliate* means any depository institution holding company, of which an insured bank or insured savings association is a subsidiary and any other subsidiary of such depository institution holding company. Any entity which is a subsidiary of an insured bank or insured savings association shall be deemed to be an affiliate of that insured bank or insured savings association.

(b) *Appearance* means an individual's physical presence before the United States, including the Board or RTC, in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and

includes, for example, correspondence or telephone calls.

(c) *Assisted entity* means (1) any insured depository institution which has received financial assistance from the RTC to prevent its failure, (2) any insured depository institution resulting from a merger or consolidation with any insured depository institution described in paragraph (k) of this section, or (3) any parent depository institution holding company of an insured depository institution described in paragraph (k) of this section; *Provided*, that an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such insured depository institution or insured depository institution holding company and the RTC.

(d) *Assuming entity* means any insured depository institution or insured depository institution holding company which has entered into a transaction with the RTC to purchase some or all of the assets and assume some or all of the liabilities of a failed insured depository institution for a period of one year following the closing of such failed insured depository institution.

(e) *Board* means the Oversight Board.

(f) *Chairperson* means the Chairperson of the Board.

(g) *Covered employee* means any entity or employee required to file a confidential statement of employment and financial interests pursuant to § 1505.24(a) or a public Financial Disclosure Report (SF 278) pursuant to § 1505.25.

(h) *Dependent child* means a son, daughter, stepson, or stepdaughter who either:

(1) Is unmarried, under 21, and living in the employee's household; or

(2) Has received over half of his or her support from the employee in the preceding calendar year.

(i) *Employee* means any member, officer, employee of the Board, including any personnel detailed from any executive department or agency, or individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Oversight Board or RTC, under the direct supervision of an officer or employee of the Board or RTC. The term does not include special

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government employees or independent contractors retained by the RTC whose conduct is regulated under 12 CFR part 1506.

(j) *Independent contractor* means the individual or entity whose work product is supervised by the Oversight or RTC, but whose employees do not perform functions or activities of the Board or RTC, under the direct supervision of board or RTC employees.

(k) *Insured depository institution* means any bank or savings association the deposits of which are insured by a federal deposit insurance fund administered by the FDIC.

(l) *FIRREA* means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73 of August 9, 1989 (103 Stat. 183).

(m) *Member of the employee's immediate household* means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(n) *Person* means an individual, insured depository institution, corporation, company, association, partnership, firm, society, or any other organization or institution.

(o) *President* means the President and Chief Executive Officer of the Board or his or her delegate.

(p) *RTC* means the Resolution Trust Corporation.

(q) *Security* means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(r) *Senior employee* means any member or other officer or employee of the Oversight Board named in or designated by the Director of the Office of Government Ethics pursuant to 18 U.S.C. 207(d).

(s) *Special government employee* means any employee performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period estimated not to exceed 130 days during any period of 365 consecutive days. Independent members of the Oversight Board and members of the National and Regional Advi-

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sory Boards who perform duties on this basis will be special government employees.

(t) *Subsidiary* means a company the voting stock of which is 50 percent or more owned or controlled by another company.

§ 1505.3 Designated agency ethics official and alternate.

(a) The Board's ethics program shall be coordinated and managed by the Designated Agency Ethics Official (hereinafter referred to as the DAEO) who will be appointed by the Oversight Board.

(b) An Alternate Designated Agency Ethics Official (hereinafter referred to as the Alternate DAEO) will also be appointed by the Board, to act for the DAEO when he or she is unavailable. When acting for the DAEO, the Alternate DAEO may perform all of the duties and functions of the DAEO. All references in these regulations to the DAEO shall mean the Alternate DAEO whenever he or she is acting for the DAEO.

§ 1505.4 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The DAEO shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The DAEO shall assure that a copy of this part is provided to each new Board employee within 30 days of commencement of employment and each such employee shall complete and file a certification acknowledging receipt of the regulations. The DAEO shall annually distribute a reminder of the basic provisions of this part to each employee.

(c) An employee who believes that any assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her immediate supervisor.

§ 1505.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee, or special government employee, may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, an oral or written warning or admonishment, reprimand, suspension, or removal from office.

(c) Remedial action may include divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless there is a request for review, pursuant to § 1505.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 1505.6 shall take effect immediately upon receipt of notice of the determination of the President.

§ 1505.6 Review of remedial actions.

When remedial action is ordered pursuant to § 1505.5, the affected Board employee, or special government employee, may request the President to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The President will promptly review the matter and provide a written determination which shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees**§ 1505.7 General rules.**

Employees are expected to maintain high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding the Board's or RTC's efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a Board decision outside official channels; or
- (f) Adversely affecting the public's confidence in the integrity of the Board or RTC.

§ 1505.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the Board or RTC;

(2) Is supervised or regulated by any federal financial regulatory agency;¹

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(4) Is an officer, director, or employee of any insured depository institution or trade organization comprised of members who seek to do business with the Board or RTC.

(b) The prohibition of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationship rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

¹A professional, trade, or business association, a substantial majority of whose members are regulated by or do or seek to do business with the Board or RTC or any federal financial regulatory agency, is itself a prohibited source for purposes of this section. (Memorandum 87 x 13, OGE, issued 1987)

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(3) Except as otherwise provided in § 1505.16, to the acceptance of loans from insured depository institutions or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering at which the attendance of the employee is in the interest of the Board.

(c) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the DAEO within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the DAEO. The cost of returning such gift or item shall be borne by the Board.

(d) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(e) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law.

(f) Procurement officials shall not, during the conduct of a procurement of goods or services under the Federal Procurement laws and regulations, knowingly solicit or accept any money, gratuity, or other thing of value from

any officer, employee, representative, agent, or consultant of any competing contractor for such procurement.

§ 1505.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the Board and an employee shall not accept payment or reimbursement for such expenses from any private source except as provided in this § 1505.9(d).

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to his or her immediate supervisor and the DAEO within 30 days of such acceptance. When appropriate, the Board will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 1505.8 (b)(4) and (b)(5).

(d) Under the provisions of 5 U.S.C. 4111, an employee may accept reimbursement for travel, lodging, or subsistence expenses from an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), if no U.S. Government payment or reimbursement is made for the expense, and acceptance does not result in, or create the appearance of, a conflict of interest; and in the case of employees who are permanent employees of any executive department or agency, being utilized by the Board on a reimbursable basis, where acceptance would be consistent with the other federal agency's travel policies and regulations.

§ 1505.10 Use of official information.

(a) Except as permitted in § 1505.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her Board employment but which is not available to the general public in

order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a.

(c) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905.)

§ 1505.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before insured depository institutions or public organizations on matters involving the Board or RTC unless the employee receives prior approval, and prior clearance of material to be published, by the President.

(b) An employee shall not use his or her official title without specific written approval of the President. An example of title use where approval is normally appropriate is where the employee's Government position is referred to in biographical information provided in conjunction with lectures, speeches, and manuscripts.

(c) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her Board employment unless the information is available to the general public or the President gives authorization for such use, upon the determination that the use of the information is in the public interest.

(d) No employee may receive any compensation, honorarium, or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the Board or RTC or contains information that is not otherwise available to the general public. No employee may accept an honorarium of more than \$2,000 for any appearance, speech, or article in connection with non-board related activities. (See 2 U.S.C. 441i.) Employees appointed by the President to full-time noncareer positions are prohibited from receiving any earned income from any outside

employment or activity. (See Executive Order 12674 of April 12, 1989.)

§ 1505.12 Employment of relatives.

(a) For the purposes of this section:

(1) A *relative* is any person related to an Oversight Board official, an RTC official, or a special Government employee of the Board or RTC as parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An *official* is any employee who has authority to appoint, employ, promote, or advance employees or who recommends anyone for appointment, employment, promotion, or advancement at the Oversight Board or the RTC.

(3) A *supervisor* is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) A Board official may not:

(1) Appoint, employ, promote, or advance any relative to a position at the Oversight Board or the RTC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the Oversight Board or RTC; or

(3) Appoint, employ, promote, or advance a relative of another Oversight Board or RTC official if such other official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to his or her supervisor. The appropriate management official, in consultation with the DAEO, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the work unit, and the potential for conflicts of interest or the appearance

thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate management officials shall determine whether the relative may be assigned to another position at the Board which is outside the scope of the supervisor's authority.

§ 1505.13 Use of property and resources owned or controlled by the Board or RTC.

An employee shall not, directly or indirectly, use or allow the use of any property or resources, owned or controlled by the Board or RTC for other than officially approved activities. An employee has a duty to protect and conserve property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 1505.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgement by a court or one imposed by law such as federal, state, or local taxes.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the Board or the government, or while on duty for the Board.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal or dishonest, or any other conduct prejudicial to the Board. Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the rules of these Standards of Conduct shall promptly convey such information to the DAEO.

(d) *Discrimination.* An employee shall not discriminate against any other employee, or applicant for employment, nor exclude any person from participating in, or deny to any person the benefits of, any program or activity administered by the Board or RTC on the

basis of race, color, religion, national origin, sex, age or handicap.

(e) *Political activity.* Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns except as permitted by law. Prohibitions concerning political activities may be found in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607.

(f) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. 96-303, 94 Stat. 855-856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201 through 209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibitions against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285); and

(13) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 1505.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her Board duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208.)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit in an insured depository institution). (See 18 U.S.C. 208.)

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the Board or RTC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207.)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying his or her supervisor and the DAEO in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee receives the prior written determination by the

President, after consultation with the DAEO and the Office of Government Ethics, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Board. (See 18 U.S.C. 208(b)(1).)

§ 1505.16 Extensions of credit.

Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed \$10,000:

(a) Covered employees may not knowingly, directly or indirectly, accept or become obligated on any extension of credit from any institution which the RTC manages as conservator or an assisted or assuming entity, for as long as the institution remains in conservatorship or one year following the end of the RTC's involvement with the assisted or assuming entity. Such an institution will hereafter be referred to as a "prohibited creditor". The DAEO for the Oversight Board will maintain a list of "prohibited creditors" for review by Oversight Board employees. An employee's knowledge that he was accepting or becoming obligated on an extension of credit from such an institution can be presumed if the institution was on the list of prohibited institutions and the employee had a reasonable opportunity to review the list prior to accepting or becoming obligated on an extension of credit from such an institution.

(b) If the adoption of this regulation, change in marital status, commencement of employment, or an action affecting the status of the creditor² results in an extension of credit prohibited by paragraph (a) of this section, such extension of credit may be retained by the covered employee if it is liquidated under its original terms, without renegotiation. If an otherwise

²Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any particular matter having a direct and predictable impact on the creditor; *Provided*, that the President, after consultation with the DAEO and the Office of Government Ethics, may determine that the obligation will not affect the integrity of the employee's services to the Board.

(c) A covered employee otherwise required to liquidate a non-conforming extension of credit under its original terms may request permission to renegotiate the loan. Any such request shall be made, in writing, to the President, with a copy provided to the DAEO, stating:

- (1) The purpose of the renegotiation;
- (2) The terms and conditions of the original loan;
- (3) The terms and conditions now available to the general public;
- (4) The terms and conditions now offered the employee;
- (5) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and
- (6) The financial hardship, if any, denial of the request will cause.

(d) No covered employee may renegotiate a loan from a prohibited creditor without the prior written approval of the President, after consultation with the DAEO.

(e) Notwithstanding the restrictions of this section, a covered employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

- (1) The loan is for employee's personal residence;
- (2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;
- (3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;
- (4) The employee receives the prior approval of the appropriate approving official, who shall have consulted with the DAEO; and
- (5) The employee is disqualified from participating in any particular matter

having a direct and predictable impact on the creditor.

(f) An extension of credit to a covered employee's spouse or dependent child shall constitute an extension of credit to the employee.

§ 1505.17 Securities of insured depository institutions.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities of an insured depository institution or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee may own or control securities of an insured depository institution, or affiliate thereof, whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the President and DAEO, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the insured depository institution or affiliate; *Provided*, that the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of options or preemptive rights arising out of the ownership of such securities.

(2) The President, after consultation with the DAEO, may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might impair the employee's ability to

perform his or her Board duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured depository institution, or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if:

(1) The assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities; and

(2) The employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust.

Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the Board. (This provision, which represents a statutory waiver pursuant to former 18 U.S.C. 208(b)(2), is adopted from the FDIC regulations at 12 CFR 336.1-7(c).)

§ 1505.18 Other investments.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities issued by any bridge bank or other institution organized under section 21A(b)(11) of the Federal Home Loan Bank Board Act as added by section 501(a) of FIRREA.

(b) While employed by the Board an employee may not purchase securities of, or otherwise invest in, any open- or closed-end fund primarily designed to acquire thrifts or other insured depository institutions.

(c) While employed by the Board an employee may not knowingly acquire, directly or indirectly, any financial interest which conflicts or, appears to conflict, with his or her official duties and responsibilities.

(d)(1) Except as provided in paragraph (d)(2) of this section, an employee may own or control investments described in paragraph (c) of this section whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in mar-

ital status or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the DAEO within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision or other action having a direct and predictable impact on the employee's financial interest; *Provided*, that the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

(2) The employee may be required to dispose of his or her interest in securities whenever disqualification under paragraph (d)(1) of this section might impair the employee's ability to perform his or her Board duties and responsibilities.

(e) An employee may have an indirect interest in otherwise prohibited investments which arises through ownership of shares (or other investment units) of publicly held companies, mutual funds, or investment trusts which have broadly diversified portfolios not specializing in any particular industry and which are:

(1) Widely held and are not under the employee's control; or

(2) Limited partnership interests in large public partnerships (i.e., one which has at least 39 partnership interests) and less than 25% of the gross revenues of the limited partnership is derived from firms doing business with the RTC.

The employee is disqualified, however, from participating in any particular matter having a direct and predictable impact on the employee's financial interest in such investments; *Provided*, that the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

§ 1505.19 Purchase of assets of institutions in conservatorship or receivership.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which, to the employee's knowledge, the RTC manages as conservator of an insured depository institution or holds in its capacity as receiver, liquidator, or liquidating agent of the assets of an insured depository institution, regardless of how the property is sold.

(b) An employee who is involved in the disposition of conservatorship or receivership assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such assets. The employee shall advise the President and the DAEO in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the Board confidential information regarding the sale or disposition of assets.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

§ 1505.20 Purchase of Board or RTC property.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase or bid on any property owned by the Board or owned or held by the RTC in its corporate capacity.

§ 1505.21 Providing goods or services to the Board or RTC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the Board or RTC unless the President determines, subject to the prohibitions in 18 U.S.C. 203 and 205, that there is a most compelling reason to do so, such as where the Board's or RTC's needs

cannot be otherwise met. For the purposes of this section, the term "services" does not include services as required by the employee's position with the Board.

§ 1505.22 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her Board employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the Board. Employment or activity which is not compatible with the employee's duties and responsibilities to the Board includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the Board. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any insured depository institution, including a credit union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services; or

(3) Active participation in or conduct of a business dealing with or related to real estate including, but not limited to, real estate brokerage, management and sales, property insurance and appraisal services.

(b) An employee shall not engage in outside employment or other activity, with or without compensation, with any person or entity doing business with the Board or RTC.

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the Board or RTC. (See 18 U.S.C. 209.)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an

agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203.)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205.)

(f) An employee must obtain the prior written approval of the President, after consultation with the DAEO, in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205.)

(g) This section does not preclude an employee from participating in the activities of:

(1) Charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 1505.16 or 18 U.S.C. 203 or 205; or

(2) National or state political parties, if not prohibited by law.

(h) Any employee who engages in, or intends to engage in, outside employment or other activity must obtain the prior written approval of the President who, after consultation with the DAEO, will determine whether such employment or activity is compatible with the purposes of this part.

§ 1505.23 Employment of family members by persons other than the Board or RTC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the President the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household, within 30 days of when the employee becomes aware of it; by:

(1) An insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the Board

or RTC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Board or RTC.

(b) A covered employee will not be assigned to any matter directly involving the family member's employer unless the President, after consultation with the DAEO, makes a prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the Board will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

Subpart D—Confidential Statements of Employment and Financial Interests; Public Financial Disclosure Reports; and Report of Employment Upon Resignation

§ 1505.24 Confidential statement of employment and financial interests.

(a) *General.* All Board employees, including employees of other agencies detailed to the Board, classified at GS-13 to GS-15, or at a comparable pay level under the Board's personnel authority, shall be deemed to be covered employees for the purpose of filing confidential statements of employment and financial interests pursuant to this section. The President, after consultation with the DAEO and the Office of Government Ethics, may require the filing of such statements by employees at pay levels below GS-13, or a comparable pay level under the Board's personnel authority, when it is determined to be essential to protect the integrity of the Government and avoid possible conflict of interest situations.

(b) *Submission of statements.* (1) Covered employees will be required to file statements of employment and financial interests within 30 days of initial employment, and each reappointment thereto and annually thereafter with

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information as of June 30. Covered employees who have commenced employment within 90 days of June 30 need not submit another statement for such reporting period.

(2) Statements shall be made upon forms prescribed by the Board. Instructions accompanying the forms will indicate where the statement is to be submitted. Each covered employee required to file shall be notified of their obligation.

(3) Each statement of employment and financial interests and its instructions will require the covered employee to supply information on:

(i) All other employment; and

(ii) The financial interests of the employee which have been determined to be relevant in light of the duties he or she is to perform, including, but not limited to, the name of companies in which he or she has a financial interest, and the nature of such financial interest.

(c) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the DAEO, who shall be responsible for maintaining the statements in confidence.

§ 1505.25 Public Financial Disclosure Reports.

Officers and employees (including special Government employees, who are expected to serve in excess of 60 days out of a 365 day period) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS-16 (step 1), and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the Office of Government Ethics) must file Financial Disclosure Reports (SF 278) upon appointment, termination, and annually in accordance with the regulations of the Office of Government Ethics, 5 CFR part 2634 (formerly 5 CFR part 734). Oversight Board members who are employees of other government agencies will file their reports with their employing

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agency, and pursuant to FIRREA, file a copy with the RTC ethics counselor.

§ 1505.26 Report of employment upon resignation.

Each covered employee shall report to the DAEO on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

§ 1505.27 Limitations on representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

(1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise.

See 18 U.S.C. 207(a) and 5 CFR 2637.201 (formerly 5 CFR 737.5(a)).

(b) No former employee or special government employee, within two years after termination of employment with the Board, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the

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United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

(1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) If such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

See 18 U.S.C. 207(b)(i) and 5 CFR 2632.202 (formerly 5 CFR 737.7(a)).

(c) No former senior employee, within two years after termination of employment with the Board or RTC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance:

(1) Before any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which matter he or she participated personally and substantially while an employee.

See 18 U.S.C. 207(b)(ii) and 5 CFR 2637.203 (formerly 5 CFR 737.9(a)).

(d) The provisions of paragraphs (a), (b), and (c) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a direct and predictable effect on a certain party or group of parties. See 5 CFR 2637.201, (formerly 5 CFR 737.5(c)).

(e) For a period of one year after termination of employment with the Board, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person except the United States, in any

formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to the Board or RTC or any of its officers or employees in connection with any particular government matter, whether or not involving a specific party, which is pending before the Board or RTC, or in which the Board or RTC has a direct and substantial interest. See 18 U.S.C. 207(c) and 5 CFR 2637.204 (formerly 5 CFR 737.11).

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

§ 1505.28 Limitations on aiding or advising.

(a) For a period of one year after termination of employment with the Oversight Board, no former covered employee, including a former senior employee, shall knowingly act as agent or attorney for, or otherwise aid or advise any other person (except the United States), concerning any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, or other particular matter:

(1) In which the former employee knows that the United States is a party or has a direct and substantial interest;

(2) That involves the same specific party or parties; and

(3) In which matter he or she participated personally and substantially while an employee.

(b) For purpose of paragraph (a) of this section, the limitations on aiding and advising shall only apply to particular matters about which the former employee had access to information which is exempt from disclosure under section 552 of title 5 of the United States Code, and which is so designated by the Oversight Board or RTC and which information is the basis for the aid or advice.

§ 1505.29 Consultation as to propriety of appearance before the Board or RTC.

Any former employee who wishes to appear before the Board or RTC on behalf of any person other than the United States, or an agency thereof, at

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any time after termination of employment with the Board, may consult the DAEO as to the propriety of such appearance.

§ 1505.30 Suspension of appearance privilege.

Any former employee or special government employee who, knowingly fails to comply with the provisions of this subpart, may be prohibited from making an appearance before or an oral or written communication to the Board or RTC for such period of time as provided in procedures to be adopted by the Board or RTC.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 1505.31 General.

(a) Special government employees are those serving the Board by performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. The two independent members of the Board and members of the National and Regional Advisory Boards are expected to be special government employees.

(b) The rules of conduct contained in subparts A, B, C, D, and E of this part shall also apply to special government employees insofar as their employment with the Board is concerned, except as otherwise indicated in this subpart F. Thus, for example, the prohibition in § 1505.14(e), concerning active participation in political management or campaigns (5 U.S.C. 7321 *et seq.*, the Hatch Act), only applies to special government employees on days that they serve the Board, and the general restrictions imposed on outside employment and investments by subpart C of this part do not apply to special government employees as long as they are disqualified from dealing with particular matters affecting their employers or financial interests.

§ 1505.32 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special govern-

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ment employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special government employee:

(1) He or she may not, except in the discharge of his or her official duties represent anyone else (or receive compensation from another's representation) before a court or Government agency in a particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she has at any time participated personally and substantially in the course of his or her Government employment. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b).

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special government employee on the days when he or she does not serve the Government as well as on the days when he or she does.

(c) A special government employee who undertakes service with the Board, and another Federal entity, including the RTC, shall inform each of his or her arrangements with the other.

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires the employee to participate personally in a particular matter before the Board or RTC. In this situation, assuming that such representation is not prohibited by 18 U.S.C. 203 or 205, the special government employee should participate in the matter for his or her regular employer only with the knowledge and approval of the President, after consultation with the DAEO. However, an independent member of the Oversight Board or a member of a National or Regional Advisory Board may not represent his or her regular employer in, and must be fully recused from agency deliberations or actions concerning any contract or other particular matter such employer has before or involving the Oversight Board or RTC, and must also be prohibited from sharing in any fees or profits directly attributable to such contract or other particular matter. Employers of those who serve as independent members of the Oversight Board or members of a National or Regional Advisory Board are not barred from contracting with the Oversight Board.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in §1505.34(b). The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether immediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the Board or RTC.

§ 1505.33 Applicability of 18 U.S.C. 207.

Section 207 of title 18, U.S.C., applies to individuals who have left Govern-

ment service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in §1505.34(b). In addition, section 207 of title 18, U.S.C. prevents a former employee for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

§ 1505.34 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18, U.S.C., bears on the activities of Government personnel, including special government employees in the course of their official duties. In general, it prevents an employee or special Government employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted by the President, after consultation with the DAEO and the Office of Government Ethics. Until a waiver is granted, special government employees are disqualified from participating in

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any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase “participates personally and substantially in a particular matter” applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, change, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208.

§ 1505.35 Use of Board employment.

A special government employee shall not use his or her Board employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1505.36 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her Board employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, “inside information” means information obtained under Board or RTC authority which has not become part of the body of public information.

(b) The provisions of §1505.11(a) through (d) with regard to employees shall be applicable to special government employees.

§ 1505.37 Coercion.

A special government employee shall not use his or her Board employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person particularly one with whom he

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or she has family, business, or financial ties.

§ 1505.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the ethics of any conduct falling within the conflicts of interest statutes, or regulations, should confer with the DAEO. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest, will also be provided by the DAEO to any special government employee, prospective special government employee, and their appointing officials and supervisors desiring it.

§ 1505.39 Disclosure of employment and financial interests.

Special government employees will be required to file a confidential statement of employment and financial interests in accordance with § 1505.24, or a Financial Disclosure Report (SF 278) in accordance with § 1505.25.

Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

§ 1505.40 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

(a) For the purposes of this section:

(1) *Default* has the meaning set forth in 12 CFR 1506.2(d).

(2) *Pattern or practice of defalcation* has the meaning set forth in 12 CFR 1506.2(k).

(3) *Loss* has the meaning set forth in 12 CFR 1506.2(g).

(4) *Material obligation* has the meaning set forth in 12 CFR 1506.2(i).

(5) *Substantial loss to the Federal Deposit insurance funds* has the meaning set forth in 12 CFR 1506.2(t).

(b) The RTC shall prescribe policies and procedures which, at a minimum ensure that any individual (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606) who is performing, directly or indirectly, any function or service on behalf of the RTC meets

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minimum standards of competency, experience, integrity, and fitness and that only persons meeting such minimum standards:

(1) Enter into any contract with the RTC; or

(2) Are employed by the RTC or otherwise perform any service for or on behalf of the RTC.

(c) The standards established by the RTC in its policies and procedures issued pursuant to paragraph (a) of this section shall, at a minimum, prohibit from service on its behalf any person who has:

(1) Been convicted of any felony;

(2) Been removed from, or prohibited from participation in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(3) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(4) Caused a substantial loss to Federal deposit insurance funds.

(d) The RTC shall prescribe policies and procedures which require that any offer (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606), and any employment application submitted to the RTC, include a list and description of any instance during the preceding 5 years in which the person or company under such person's control defaulted on a material obligation to an insured depository institution; and such additional information as the RTC determines to be necessary.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

PART 1506—QUALIFICATION OF, ETHICAL STANDARDS OF CONDUCT FOR, AND RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION BY INDEPENDENT CONTRACTORS

Sec.

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1506.16 Resolution Trust Corporation as conservator.

AUTHORITY: 12 U.S.C. 1441a(a)(13) and (p)(1)(B), (3), (6), and (7).

SOURCE: 55 FR 5350, 5356, Feb. 14, 1990, unless otherwise noted.

§ 1506.1 Authority, purpose, and scope.

(a) *Authority.* This part is adopted pursuant to section 21A(p) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ('FIRREA'), Pub. L. 101-73, section 501, 103 Stat. 183, 363 (to be codified at 12 U.S.C. 1441a(p)); section 21A(b) (4) and (12) of the Federal Home Loan Bank Act, as added by section 501 of FIRREA, Pub. L. 101-73, section 501, 103 Stat. 183, 363 (to be codified at 12 U.S.C. 1441a(b) (4) and (12)); and section 11(d) of the Federal Deposit Insurance Act, as amended by section 212 of FIRREA, Pub. L. 101-73, section 212, 103 Stat. 183, 222 (to be codified at 12 U.S.C. 1821(d)). Pursuant to those sections, the Oversight Board and the Resolution Trust Corporation are promulgating rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the United States Code, and minimum standards of competence, experience, integrity, and fitness.

(b) *Purpose.* These regulations seek to ensure that contractors meet minimum standards of competence, integrity, fitness, and experience and are held to the highest standards of ethical conduct in performing services for the RTC. They are intended to prevent:

(1) The direct or indirect use of information gained through performance of a contract with the RTC for personal

gain not contemplated by the contract; and

(2) The use of personal relationships or improper influence to gain unfair competitive advantage in obtaining contracts with the RTC.

(c) *Scope.* These regulations apply to contracts for services entered into by the RTC, after the effective date of these regulations, with law firms, accounting firms, investment banking firms, real estate brokers, appraisers, asset managers, property managers, leasing agents, and others performing similar services on behalf of the RTC. Except for contracts for legal, accounting, or investment banking services, contracts with a single contractor attributable to the Corporation, a single conservatorship, or a single consolidated field office, in which payments over the course of one year are not expected to aggregate in excess of \$25,000, are not subject to these regulations. Further, these regulations shall not apply to contracts for day-to-day operations, routine maintenance, or the provision of electronic data processing services for the RTC, and shall not apply to real estate brokers' commissions resulting from nonexclusive offerings.

§ 1506.2 Definitions.

As used in this part:

(a) *Competing property* means real property which has the same general character as an asset which is the subject of a contract between the contractor and the RTC, is in the same geographic market as defined in the solicitation, and in which the contractor or a related entity has 25 percent or greater ownership interest.

(b) *Contractor* means the individual or entity submitting an offer to perform services for the RTC or having a contractual arrangement with the RTC to perform services but does not include special government employees. For the purposes of §§ 1506.6, 1506.7, and 1506.8, *contractor* includes a subcontractor.

(c) *Defalcation* means:

(1) Any default on any obligation to pay principal or interest to an insured depository institution; or

(2) Any act that was intended to cause a loss to an insured depository institution; or

(3) A borrower's entering into a loan agreement with an insured depository institution, the making of which was an unsafe or unsound action of the institution on the basis of facts that the borrower knew or should have known, and the borrower's default on such loan in the amount of \$50,000 or more.

(d) *Default* means:

(1) A delinquency of 90 or more days as to payment of principal or interest on a loan or advance from an insured depository institution; or

(2) A failure to comply with the terms and conditions of a contract with the FDIC, the FSLIC, or the RTC, or an insured depository institution, other than a loan or advance.

(e) *FDIC* means the Federal Deposit Insurance Corporation in its corporate or receivership capacity or as conservator of an insured depository institution.

(f) *FSLIC* means the former Federal Savings and Loan Insurance Corporation and the Federal Savings and Loan Insurance Corporation Resolution Fund.

(g) *Loss* means:

(1) An obligation as to which there is a continuing legal claim that is owed to an insured depository institution, or to Federal deposit insurance funds, FSLIC, or to the RTC that is 12 months or more delinquent as to principal or interest; or

(2) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory in favor of any insured depository institution, Federal deposit insurance funds, FSLIC, or the RTC.

(h) *Management official* means those individuals within a contractor's organization who have substantial responsibility for the direction and control of the contractor's policies and operations. With respect to partnerships that have a management committee or executive committee which has been given such responsibilities, this means only the members of those committees and, if no such committee exists, this means each of the general partners.

(i) *Material obligation* means an obligation which, if not satisfied, would cause a loss of \$50,000 or more.

(j) *Organizational conflict of interest* means a situation in which:

(1) Performance of a previous contract with the RTC or the Oversight Board, by the contractor or a related entity, may provide the contractor with an unfair competitive advantage in obtaining this contract; or

(2) The contractor or any related entity has an interest or relationship which could adversely affect the contractor's ability to perform under the contract or to represent the RTC.

(k) *Pattern or practice of defalcation* means:

(1) There are two or more instances of defalcation as defined in § 1506.2(c)(1) with respect to which there are continuing legal claims in an aggregate amount in excess of \$50,000; or

(2) There are two or more instances of defalcation as defined in § 1506.2(c)(2) or § 1506.2(c)(3).

(l) *Key employee* means an individual who participates personally and substantially, through decision, approval, disapproval, recommendation, or the rendering of advice, in the negotiation and performance of, and monitoring for compliance under the contract with the RTC.

(m) *Personal conflict of interest* means a business or financial interest of an individual, his or her spouse, minor child or other person with whom the individual has a close personal relationship, which could adversely affect the individual's ability to perform under the contract or represent the interests of the RTC.

(n) *Related entity* means a contractor's management officials; any individual or entity that controls or is controlled by or is under common control with the contractor; and any other entity that it controlled by any of a contractor's management officials and that will perform work pursuant to the contract. For purposes of this part, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, or through one or more subsidiaries, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. A subfranchiser entity shall not be regarded as related to a contractor that is its master franchiser if the subfran-

chiser is independently owned and operated.

(o) *RTC* means, collectively, the Corporation, the Resolution Trust Corporation as receiver, and the Resolution Trust Corporation as conservator. The *Corporation* means the Resolution Trust Corporation acting as an instrumentality of the United States, and not as conservator or receiver for an insured depository institution.

(p) *RTC employee* means a director, officer, or employee of the RTC, including a special government employee, or an employee of any other government agency who is properly acting on behalf of the RTC.

(q) *Source selection information* means information related to a particular contract or contractor selection process, including any such contract or process using procedures other than competitive procedures, which, if not available to the public, and, if obtained by a contractor, would give an advantage in the contract selection process.

(r) *Special government employee* means any employee serving the RTC with or without compensation for a period not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

(s) *Subcontractor* means any individual or entity with whom the contractor has entered or intends to enter into a contract to perform services within the scope of this part in order to fulfill the contractor's obligation under its contract with the RTC.

(t) *Substantial loss to the Federal deposit insurance funds* means a loss of more than \$50,000 to the funds maintained by a Federal deposit insurance agency for the protection of depositors.

§ 1506.3 Contractors' Conflicts Committee and Outside Counsels' Conflicts Committee.

(a) *Designation.* The Board of Directors of the Corporation will designate officials of the FDIC or Corporation as members of a Contractors' Conflicts Committee, which will resolve issues of conflict of interest affecting independent contractors, other than law firms, which arise under these regulations.

The Outside Counsels' Conflicts Committee appointed by the General Counsel of the FDIC, or designee, will resolve issues of conflict of interest relating to law firms.

(b) *Authority.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may delegate their authority to resolve conflicts of interest issues which arise under these regulations.

(c) *Referrals to the Board of the Corporation.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may make referrals of and recommendations to the Board of Directors of the Corporation with respect to situations in which a Committee determines that a very significant conflict of interest exists but, nevertheless, the contractor should be engaged because the contractor has special expertise not otherwise available or the engagement is otherwise in the best interests of the government.

(d) *Decisions.* Decisions issued either by the Contractors' Conflicts Committee itself, or the Board of Directors of the Corporation itself on matters referred to it by the Contractors' Conflict Committee shall be in writing and shall include statements of the bases for the decisions. Such decisions shall be filed with the Executive Secretary of the Resolution Trust Corporation and shall be made available to the public upon request, with such redactions as may be required to protect the privacy interests of identifiable individuals or confidential business information.

§ 1506.4 Qualification of contractors.

(a) *Requirements.* The RTC shall not enter into a contract with any contractor unless the contractor and its related entities meet minimum standards of competence, integrity, fitness, and experience. In addition to presenting evidence (on a form or forms to be furnished by the RTC for that purpose) of competence and experience, the contractor shall provide a list of any instance during the preceding five years in which there was a default by the contractor or any of its related entities on any material obligation to an insured depository institution, and shall

be required to certify to the following items:

(1) That neither the contractor nor any of its related entities has been convicted of a felony;

(2) That neither the contractor nor any of its related entities has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) That neither the contractor nor any of its related entities has demonstrated a pattern or practice of defalcation under § 1506.2(k)(1);

(4) That neither the contractor nor any of its related entities has caused a substantial loss to Federal deposit insurance funds;

(5) That neither the contractor nor any of its related entities, nor any entity that during the past five years was a related entity of the contractor or those who control the contractor, has failed to satisfy an obligation to pay principal or interest at its full value owed to any Federal deposit insurance funds, FSLIC, or the RTC;

(6) That neither the contractor nor any of its related entities are currently in default on any obligation(s) to the FDIC, the FSLIC, or the RTC;

(7) That neither the contractor nor any of its related entities:

(i) Is currently a party to an administrative or judicial proceeding in which any of them is alleged to have engaged in fraudulent activity or has been charged with the commission of a felony or which seeks a remedy that would prevent or materially interfere with its ability to perform on the contract; or

(ii) Is subject, to their knowledge, to an administrative or criminal investigation relating to fraudulent activity or the commission of a felony;

(8) That, during the past five years, neither the contractor nor any of its related entities has been held liable for fraud, dishonesty, misrepresentation, or breach of fiduciary duty;

(9) That neither the contractor nor any of its related entities is currently excluded from Federal procurement or nonprocurement programs;

(10) That neither the contractor nor any of its related entities is subject to

an unsatisfied final judgment in favor of the FDIC, the FSLIC, or the RTC;

(11) That neither the contractor nor any of its related entities is a party to a lawsuit in which the FDIC, the FSLIC, or the RTC is seeking recovery in excess of \$50,000 from the contractor or its related entities; and

(12) That the contractor will not employ any individual or subcontractor to perform work on the contract who:

(i) Has been convicted of any felony;

(ii) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(iii) Has demonstrated a pattern or practice of defalcation;

(iv) Has caused a substantial loss to Federal deposit insurance funds; or

(v) Is currently in default on any obligation to the FDIC, the FSLIC, an insured depository institution or the RTC.

Depending upon the nature of the contract, a contractor may be required to submit such additional certifications or information with respect to its activities and those of its related entities as the RTC deems appropriate.

(b) *Procedures.* (1) A contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section shall provide information which fully explains the circumstances giving rise to its inability to furnish the certification(s). The Contractors' Conflicts Committee, or the Outside Counsels' Conflicts Committee, will determine whether a contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section is deemed to meet minimum standards of fitness and integrity.

(2) A contractor may consolidate the responses of its related entities in furnishing the certifications required by paragraphs (a)(1) through (a)(11) of this section or in providing the information required by paragraph (b)(1) of this section. If a consolidated response is submitted, the contractor shall retain the information obtained from its related entities upon which it relied in preparing the certifications during the term of the contract and for a period of three years following the termination

or expiration of the contract and shall make such information available for review by the RTC upon request.

(3) Before permitting any individual to perform work pursuant to the contract, the contractor shall obtain such information from such individual as will permit it to furnish the certification to comply with paragraph (a)(12) of this section. The contractor shall retain the information upon which it relied in preparing the certification during the term of the contract and for a period of three years following the termination or expiration of the contract and shall make such information available for review by the RTC upon request. Whenever a contractor receives information indicating that the certification or any information upon which it relied in preparing the certification is incorrect in any material respect, the contractor shall promptly notify the RTC and shall not permit the individual to whom the information relates to perform work pursuant to the contract.

(4) Before permitting any subcontractor to perform work pursuant to the contract, the contractor shall determine that the subcontractor has been determined to be qualified to provide services to the RTC.

(c) *Delay.* The RTC, in case of an emergency, to preserve assets of the RTC, may delay implementation of the certification or other requirements of this section.

(Approved by the Office of Management and Budget under control number 3205-0001)

[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§ 1506.5 Disqualification of contractors.

(a) *Mandatory ineligibility.* A contractor shall be deemed not to meet minimum standards of fitness and integrity, and therefore ineligible to contract with the RTC, if the contractor:

(1) Is an individual and has been convicted of a felony;

(2) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) Has demonstrated a pattern or practice of defalcation;

(4) Has caused a substantial loss to Federal deposit insurance funds; or

(5) Is currently in default on an obligation(s) to the FDIC, the FSLIC, or the RTC.

(b) *Discretionary disqualification.* The RTC may determine that a contractor, not subject to mandatory ineligibility pursuant to paragraph (a) of this section, nevertheless does not meet minimum standards of fitness and integrity to perform work for the RTC because the past activities of the contractor, or a related entity, warrant such determination.

(c) *Notification of disqualification.* The RTC shall notify the contractor in writing of its determination of mandatory or discretionary disqualification and the reason for such determination not later than 30 days after the determination is made. The RTC will institute procedures to provide appropriate review of discretionary disqualification decisions.

[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§ 1506.6 Organizational conflicts of interest.

(a) *Information required about the contractor.* A contractor shall provide to the RTC with any bid, proposal, or offer in regard to the rendering of services to the RTC, or if no bid, proposal or offer is submitted, prior to entering into a contract with the RTC, sufficient information to permit the RTC to make a determination with regard to organizational conflicts of interest. The scope of the required information will depend on the nature of the contract and will be determined at the time of solicitation, or prior to entering into the contract. The following information shall be required about the contractor and its related entities:

(1) Relationships of the contractor and its related entities as controlling shareholder of any Federally insured depository institution or depository institution holding company;

(2) The names and addresses of contractor's related entities and a description of each related entity's business;

(3) The names of any contractor's related entities who have been or are di-

rectors or officers of an insured depository institution or depository institution holding company;

(4) A list of all competing property of the contractor and its related entities, if the contract relates to the valuation, disposition, or management of real estate;

(5) Information concerning any other business or financial interest of the contractor, or its related entities, which could adversely affect the contractor's ability to perform under the contract or to represent the RTC;

(6) Any information required to comply with the requirements of § 1506.4(b)(4); and

(7) Any other information about the contractor or its related entities which may be requested by the RTC.

(b) *Certification required.* At the time the contractor provides the information required by paragraph (a) of this section, the contractor shall also provide the following certification:

(1) That no organizational conflict exists as a result of the contractor's interests, relationships, or other RTC contracts;

(2) That the contractor has obtained a certification from each of its related entities that no organizational conflict exists as a result of the related entity's interests, relationships or other RTC contracts; and

(3) That, to the best of the contractor's knowledge, no organizational conflict exists as a result of its related entities' interests, relationships, or other RTC contracts; or, if organizational conflicts exist, provide information:

(i) Detailing those conflicts;

(ii) Requesting a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee; and

(iii) Including with the request any information it deems appropriate to support the issuance of a waiver.

(c) *Determination required.* Prior to entering into any contract, the RTC must conclude that no organizational conflict of interest exists or that, if such conflict exists, it has been waived by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

(d) *Retention of information.* Information obtained by the contractor to

comply with paragraph (a) of this section and to make the certifications required by paragraph (b) of this section shall be retained during the term of the contract and for a period of three years following termination or expiration of the contract and shall be made available for review by the RTC upon request, except to the extent that disclosure is prohibited by law.

(e) *Subsequent notification.* Within 10 days after learning of an organizational conflict of interest, the contractor shall notify the RTC of the conflict of interest and either describe the steps it has taken to eliminate the conflict or request a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

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§ 1506.7 Personal conflicts of interest.

(a) *Contractor's responsibility.* A contractor shall ensure that all management officials and key employees have no personal conflicts of interest.

(b) *Information required.* A contractor shall obtain from its management officials and key employees the following information about the personal, business, and financial relationships of themselves, their spouses, and minor children;

(1) Loans from, employment by, or an ownership interest in the depository institution whose assets are the subject of the contract;

(2) Relationships within the last five years with any other insured depository institution, or depository institution holding company, as an officer, director, or controlling shareholder or employee;

(3) Financial, business, or close personal relationships with any person or entity, who to their knowledge, has an interest in the assets which are the subject of the contract, including information about negotiations or arrangements for future employment with such person or entity;

(4) A list and description of any instance during the preceding five years in which there was a default on any material obligation to an insured depository institution; and

(5) Any other information deemed necessary by the RTC.

(c) *Certification.* The contractor shall determine whether any management official or key employee has an interest which conflicts with responsibilities to the RTC. In making those determinations the contractor may rely on the information obtained pursuant to paragraph (b) of this section, unless the contractor has reason to believe that the information provided is false or inaccurate.

(d) *Disqualification.* The contractor shall disqualify persons with personal conflicts of interests from performing work pursuant to the contract. If appropriate, the contractor may seek a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee, to allow employment of an individual with a personal conflict of interest on the contract work. In addition, the contractor shall certify to the RTC that all management officials and key employees for whom no waiver is sought, have no business, personal, or financial interest which conflicts with responsibilities to the RTC.

(e) *Contractors' Responsibilities.* The contractor shall establish a procedure to monitor for interests which conflict with the performance of contract responsibilities. The contractor shall require management officials and key employees to provide the required information prior to employment on the contract work, and to update information within 10 days of any change.

(f) *Subsequent notification.* Within 10 days after learning of a management official's or key employee's conflict of interest, the contractor shall notify the RTC of the conflict and either describe the steps it has taken to eliminate the conflict or request a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

(g) *Retention of information.* Information obtained by a contractor from its management officials and key employees pursuant to paragraph (b) of this section shall be retained during the term of the contract and for a period of three years following termination or expiration of the contract and shall be made available for review by the RTC

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upon request, except to the extent that disclosure is prohibited by law.

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[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§ 1506.8 General standards for independent contractor activities.

(a) In connection with the performance of any contract and during the term of such contract, a contractor, its key employees, subcontractors, and its related entities, shall not:

(1) Act for the RTC in any matter in which either the contractor, its key employees, subcontractors, or a related entity, has a conflict of interest unless the Contractors' Conflicts Committee or the Outside Counsels' Committee has determined that such participation is appropriate;

(2) Accept or solicit for itself or others favors, gifts, or other items of monetary value from any individual or entity whom the contractor, its key employee, or subcontractor, knows is seeking official action from the RTC in connection with the contract or has interests which may be substantially affected by the performance or non-performance of duties to the RTC;

(3) Improperly use or allow the improper use of RTC property, or property over which the contractor, its key employee, subcontractor, or related entity, has supervision or control by reason of the contract, for the personal benefit of any individual or entity other than the RTC; and

(4) Make any unauthorized promise or commitment on behalf of the RTC.

(b) Any individual who acts for or on behalf of the RTC pursuant to a contract or any other agreement shall be deemed a public official for purposes of 18 U.S.C. 201. That statute generally prohibits the direct or indirect acceptance by a public official of anything of value in return for being influenced in, or because of, an official act. Violators are subject to criminal penalties.

(c) Any individual or entity providing information or certification to the RTC

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is subject to 18 U.S.C. 1001.¹ Upon receipt of information indicating that any individual or entity has violated any provision of title 18 of the U.S. Code or other provision of criminal law, the RTC shall refer such information to the Department of Justice.

§ 1506.9 Limitations on concurrent and subsequent activities.

(a) *Avoiding undue advantage.* The Corporation has determined that contractors performing services for the RTC may have an undue advantage over competitors if they seek additional contracts with the RTC or with third parties which relate to work being performed or already performed for the RTC. To prevent such advantage, restrictions, dependent on the scope of contractual responsibilities, must be imposed on the concurrent and subsequent activities of contractors. Accordingly, the following restrictions shall apply unless waived pursuant to paragraph (b) of this section.

(1) A contractor engaged by the RTC to develop a plan of action concerning a specific insured institution cannot enter into any subsequent contract with the RTC to implement its recommendations or assist others in regard to such contract. This restriction does not bar the RTC, at its discretion, from determining to simultaneously engage a single contractor to both develop and implement a plan of action;

(2) A contractor engaged by the RTC to manage, lease, value, or establish a sales price for an asset or group of assets cannot enter into any subsequent contract with the RTC to purchase that asset or assets or assist someone other than the RTC or FDIC seeking to purchase that asset or those assets from the RTC; and

(3) A contractor cannot act for the RTC in the same particular matter in which it or a related entity has a business or financial interest.

(4) Additional limitations may be imposed on a contractor's concurrent or subsequent activities on a case-by-case basis in situations in which the RTC concludes that a contractor may gain

¹Section 1001 of title 18 generally prohibits the making of any false or fraudulent statement to a federal officer.

an unfair competitive advantage or such concurrent or subsequent activity would raise a significant appearance of impropriety. These additional limitations, when imposed, will be disclosed to the contractor prior to entering into the contract.

(b) *Waivers.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may grant waivers from the limitations imposed by paragraph (a) of this section. Circumstances which may be sufficient to warrant the granting of a waiver are:

(1) Evidence of an established effective screening mechanism which would eliminate the likelihood of the contractor obtaining any undue advantage; or

(2) An open or competitive bidding procedure in which the contractor's work for the RTC would provide no competitive advantage.

§ 1506.10 Communications with RTC employees.

(a) *Prohibitions.* During the course of any contractor selection process by the RTC (including any contractor selection process using procedures other than competitive procedures), a competing contractor, its related entities, and employees, representatives, agents, or consultants of the competing contractor or its related entities shall not:

(1) Directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any RTC employee with personal or direct responsibility for that procurement, and competing contractors who wish to discuss employment opportunities with an employee should inquire prior to engaging in such discussions whether the employee has personal or direct responsibility for the contractor selection process in which the contractor will be or is competing;²

²Employees who have no personal or direct responsibility for the selection of a contractor may engage in employment discussions if they disqualify themselves from subsequent participation in any matter in which the contractor has an interest. See 18 U.S.C. 208(a) and 12 CFR 1605.15(b)

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any RTC employee, except as permitted by rules of the Corporation;³ or

(3) Solicit or obtain, directly or indirectly, from any RTC employee, prior to the award of the contract, any proprietary or source selection information regarding such contractor selection process.

(b) *Competing contractor.* For purposes of this section, "competing contractor" with respect to any contractor selection process (including a process using procedures other than competitive procedures) means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such contractor selection process, and includes any other person acting on behalf of such entity.

(c) *Certification.* The RTC shall not award a contract or agree to a modification of a contract unless the officer or employee of the competing contractor responsible for the bid, offer, or proposal submits with it a written certification that:

(1) The officer or employee is aware of the prohibitions of paragraph (a) of this section and, to the best of that officer's or employee's knowledge and belief, he or she has no information concerning a violation or possible violation of paragraph (a) of this section; and

(2) Each officer, employee, agent, representative, and consultant of such competing contractor who participated personally and substantially in the preparation and submission of such bid, offer, proposal, or modification of such contract has certified to the responsible officer or employee that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section and will report immediately to the officer or employee

³Employees of the RTC are prohibited from soliciting or accepting anything of value from anyone having business with the RTC or the FDIC. See 12 CFR 1605.8.

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of the competing contractor responsible for the bid, offer, or proposal for any contract or modification of such contract any subsequently gained information concerning a violation or possible violation of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 3205-0001)

§ 1506.11 Confidentiality of information.

(a) *Nonpublic information defined.* Any information identified by the RTC as confidential or provided by the RTC to its attorneys in an attorney-client relationship, shall be deemed to be nonpublic until the RTC determines otherwise, in writing, or the information becomes part of the body of public information from a source other than the contractor.

(b) *Prohibitions.* The contractor and its related entities are prohibited from:

(1) Disclosing nonpublic information to anyone except as required to perform the contractor's obligations pursuant to the contract; and

(2) Using or allowing the use of any nonpublic information to further any private interest other than as contemplated by the contract.

(c) *Contractor's responsibility.* The contractor is required to take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use. Such measures may include:

(1) Notifying all employees, related entities, subcontractors, and other persons to whom the contractor may need to disclose nonpublic information to perform its responsibilities under the contract of the requirement of confidentiality and limitations as to the use of nonpublic information; and

(2) Requiring each person to whom nonpublic information is provided to execute a certification that such person understands the limitations on disclosure and use and will maintain the confidentiality of the information and not use it other than as contemplated by the contract.

(d) The Corporation shall establish a recordkeeping system, which shall serve the purposes of the RTC with respect to the Privacy Act and the Free-

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dom of Information Act. Materials designated by the RTC shall be eligible for protection under applicable law.

§ 1506.12 Source selection information.

(a) *Prohibition.* During the conduct of any contractor selection process by the RTC, no person who is given authorized or obtains unauthorized access to source selection information regarding the contractor selection process shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized to receive such information by the Executive Director of the Resolution Trust Corporation or his or her designee, the General Counsel of the FDIC or his or her designee, or the RTC's contracting officer.

(b) *Permitted disclosures.* The Executive Director of the Resolution Trust Corporation or his or her designee, the General Counsel of the FDIC or his or her designee, or the RTC's contracting officer, in accordance with internal procedures developed by the Corporation, may authorize persons or classes of persons to obtain access to proprietary or source selection information when access is essential to the contractor selection process.

§ 1506.13 Use of consultants.

(a) *Contingent fees.* Contractors are prohibited from obtaining the services of a consultant or advisor to assist in obtaining a contract with the RTC pursuant to an agreement in which payment of the consultant or advisor would be contingent on the contractor obtaining the contract.

(b) *Disclosure.* When submitting any bid, offer, or proposal to the RTC, a contractor shall include information about payments, agreements to pay or arrangements for obtaining the services (other than engineering, technical, legal, and accounting services) of consultants or advisors to assist in obtaining the contract that were made by the contractor or a related entity.

§ 1506.14 Use of information.

The RTC may utilize any information from any source, including information obtained under this part, in the contractor selection process.

§ 1506.15 Rescission of contracts.

(a) *Circumstances permitting rescission.* The RTC may rescind any contract in its entirety or with respect to a particular assignment if:

(1) There is a failure to disclose a material fact to the RTC;

(2) The contractor would be prohibited from contracting with the RTC by § 1506.5(a);

(3) Any person or related entity has been subject to a final enforcement action by any federal bank regulatory agency;

(4) There is any material change in the representations or certifications provided to the RTC under § 1506.4;

(5) There arises a personal or organizational conflict of interest not waived by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee; or

(6) There is violation of any provision of these regulations.

(b) *Contractor liability.* In those situations in which the RTC determines to rescind a contract, the RTC may seek damages from the contractor or subcontractor whose actions were the basis for the rescission. Moreover, the RTC may pursue any rights and remedies provided by law whether or not it determines to rescind the contract.

(c) *Permanent bar.* Contractors whose contracts with the RTC have been rescinded pursuant to paragraph (a) of this section shall be deemed ineligible to enter into further contracts with the RTC. This ineligibility shall apply to related entities of the contractor, unless determined otherwise by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee. The Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee may determine if and when a contractor's or its related entity's ineligibility under this paragraph may be lifted, and what, if any, conditions may apply to the lifting of the ineligibility.

(d) *Written submission.* In the case of a rescission or bar that is based upon the ineligibility of the contractor under § 1506.5 (a)(1) through (a)(4) or, if upon another ground, the integrity of a contractor is called in question, the contractor may provide a written submission to the person or entity authorized

to act for the RTC that has taken action to rescind a contract or bar a contractor. Such written submission shall receive prompt consideration, and the contractor shall be informed whether or not the RTC's decision or action will be reconsidered.

[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§ 1506.16 Resolution Trust Corporation as conservator.

(a) Contractors of an association for which the Resolution Trust Corporation is conservator that are in effect as of the effective date of this regulation or the appointment of the conservator shall not be subject to the requirements of this part. Except as provided in paragraph (b) of this section, any such contract that may be terminated under its terms without penalty shall be terminated no later than the later of six months from the effective date of this regulation or the appointment of the conservator, and no such contract may be renewed, unless such contract is in or brought into compliance with this part.

(b) During the period that terminates on the later of the date six months from the effective date of this regulation or the date six months from the appointment of the Resolution Trust Corporation as conservator, the conservator may enter into or renew a contract that does not comply with the requirements of this part, or fail to terminate a terminable contract in accordance with paragraph (a) of this section, *provided* that the conservator determines with respect to any such contract that:

(1) It is necessary for the operations of the association; and

(2) No qualified contractor is available to contract for similar services on reasonable financial terms.

The conservator shall not authorize or permit the term of any such contract to extend beyond the close of that period during which the contractor will be necessary for the operations of the association and a qualified contract for similar services on reasonable financial terms is not available, as determined by the conservator.

(c) The Corporation shall establish a reporting system for the contracts described in this section that are not in compliance with the requirements of this part. Reports shall be forwarded to the Board of Directors of the Corporation and the Oversight Board.

PART 1507—MINORITY AND WOMEN CONTRACTING OUT-REACH PROGRAM

Sec.

1507.1 Purpose and scope.

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1507.7 Oversight and monitoring.

AUTHORITY: 12 U.S.C. 1441a(a)(13); 12 U.S.C. 1833e.

SOURCE: 56 FR 43998, Sept. 6, 1991, unless otherwise noted.

§ 1507.1 Purpose and scope.

(a) Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, sec. 1216(c), 103 Stat. 183, 529 (12 U.S.C. 1833e) this part establishes a minority outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts entered into by the Board.

(b) The outreach program established by this part applies only to the contracting activities of the Board. The Board and the Resolution Trust Corporation are separate and distinct entities with different legal characteristics, contracting needs, and programs to perform their respective missions. Accordingly, this program does not apply to the Resolution Trust Corporation.

§ 1507.2 Definitions.

For the purposes of this part:

(a) *Board* means the Oversight Board.

(b) *Minority* means any Black American, Native American, Hispanic American, or Asian American.

(c) *Minority/women owned business or M/WOB* or *M/WOB firm* means a firm that is at least fifty-one percent (51%)

owned and controlled by one or more minority persons and/or women. If the firm is a publicly owned company, minority persons and/or women must own and control at least fifty-one percent (51%) of the firm's voting stock, and the management and daily business operations of the firm must be controlled by one or more minority persons or women.

(d) *Other firm* means a firm that is not a minority/women owned business.

§ 1507.3 Organizational responsibilities and staffing.

The President of the Board shall appoint an Outreach Director, who shall be a full time officer or employee of the Board performing other duties for the Board (including a contracting officer), to establish and implement the program.

§ 1507.4 Program components.

(a) *Identification.* The first component of the program is identifying M/WOB companies capable of providing goods and services to the Board. Because of the limited nature of the Board's contracting, this activity will be limited to the Washington, DC, area. The Board's staff shall:

(1) Obtain lists and directories of M/WOB firms maintained by other governmental agencies and instrumentalities;

(2) Participate in conventions, seminars, and professional meetings attended by M/WOB firms in order to explain Board contracting opportunities and obtain names of potential M/WOB contractors; and

(3) Publicize the Board's desire to obtain names of potential M/WOB firms for contracting in newspapers, trade journals, and other communications media specifically directed to M/WOB firms.

(b) *Solicitation.* An M/WOB firm identified by the staff as a potential contractor will be included in all Board education and information efforts concerning contracting opportunities and in a Board contracting database. The database will be used by the Board's staff to identify firms to be solicited for Board procurements.

(c) *Certification.* A firm tentatively identified as a minority/women owned

business must be certified as meeting the defining standards in §1507.2(c). To preserve the integrity and foster the objectives of the program, the Board must be satisfied that the defining standards of ownership and control are fulfilled by a tentatively identified firm. The Board's staff shall:

(1) Develop certification procedures, including procedures for certifying M/WOB firms that have previously certified their status to other government agencies and instrumentalities under criteria equivalent to the criteria under this program;

(2) If necessary, and subject to compliance with applicable requirements of law, request documentation from M/WOB firms for submission to the Board; and

(3) Review certification documents to assure that firms satisfy the definitions of §1507.2(c).

§ 1507.5 Promotion.

(a) The promotion of the outreach program will include the following Board staff activities:

(1) Ongoing promotion of the outreach program within the minority/women owned business community; and

(2) Ongoing promotion of the outreach program to other firms to make such firms aware of the Board's outreach program.

(b) The ongoing promotion of this program within the M/WOB community is necessary to assure awareness of the outreach program by all potential

M/WOB contractors, including newly formed M/WOB firms, and encourage their participation. The Board's contracting staff shall:

(1) Develop a promotional campaign to inform the M/WOB community of the Board's contracting needs and its commitment to involving M/WOB firms in Board contracting;

(2) Participate regularly in conferences attended by M/WOB firms to promote Oversight Board contracting opportunities;

(3) Cooperate with local agencies devoted to the promotion of minority/women owned businesses to promote Board contracting opportunities;

(4) Assist M/WOB firms in understanding and complying with the Board's contracting requirements;

(5) Assist M/WOB firms in understanding the Board's contracting needs; and

(6) Take measures to ensure that all Board staff are knowledgeable about and promote this program.

(c) Promotion of the Board outreach program to other firms interested in contracting with the Board is necessary to make such other firms aware that, under the outreach program, the Board will also ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the performance of all Board contracts, including contracts with other firms. All firms should be informed that Board contract provisions will require the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in contract performance. The Board's contracting staff shall:

(1) Develop a promotional campaign to inform M/WOB and other firms interested in contracting with the Board of the Board's policy to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the performance and subcontracting of all Board contracts;

(2) Assist other firms in understanding and complying with Board contracting requirements respecting the inclusion of minorities and women and entities owned by minorities and women, to the maximum extent possible, in contract performance and subcontracting;

(3) Encourage other firms to work jointly with M/WOB firms for the purpose of contracting with the Board; and

(4) Take measures to ensure that all Board staff are knowledgeable about this aspect of the program.

§ 1507.6 Solicitation and contract award guidelines.

Board contracting shall maximize the award of contracts to M/WOB firms and other firms that provide opportunities, to the maximum extent possible, for the inclusion of minorities and

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women and entities owned by minorities and women in the performance of Board contracts. The Board's staff shall formulate and implement guidelines directed to this objective which shall include:

(a) Consideration of the capabilities of M/WOB firms, including, but not limited to, determination of delivery schedules and the timing of offers that may facilitate offers from M/WOB firms;

(b) Inclusion of M/WOB firms in the Board's contracting database, which will identify eligible firms in each service category;

(c) Solicitation for a contract of as many bids or quotes from M/WOB firms in the database as is feasible under the circumstances; the contracting officer shall also solicit offers from other firms, but for any contract for which the contracting officer does not solicit bids from M/WOB firms, the contracting officer must document the reasons therefor;

(d) Placing notices of Board contracting in newspapers and communications media directed to

M/WOB firms, where feasible, when solicitations are publicly advertised; and

(e) Development of standard contract provisions to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the performance and subcontracting of all Board contracts.

§ 1507.7 Oversight and monitoring.

(a) The Board recognizes that the success of this program involves com-

mitment and leadership by senior management and by the staff. The Board pledges the continuing involvement of the Board's staff, at all levels, to make this program a success.

(b) The President of the Board shall establish an internal education program concerning the outreach program and the Board's commitment to the program.

(c) The President of the Board shall develop and implement such additional procedures as may facilitate reaching the goals of the outreach program.

(d) The Board's contracting staff shall report the results of the program to the Outreach Director on a periodic basis. Such reports shall include:

(1) The number of M/WOB firms that have participated in the contracting process, reporting separately minority owned or controlled firms and women owned or controlled firms;

(2) The number of contracts awarded to M/WOB firms, reporting separately awards to minority owned or controlled firms and to women owned or controlled firms; and

(3) Data concerning the inclusion of minorities and women, and entities owned by minorities and women, in the performance and subcontracting of contracts with M/WOB and other firms.

(e) The Outreach Director shall report to the President and the General Counsel of the Board on the implementation of the program. The President and the General Counsel of the Board, in turn, shall report to the members of the Board, annually or more frequently, on the implementation of the program.

SUBCHAPTER B—RESOLUTION FUNDING CORPORATION

PART 1510—RESOLUTION FUNDING CORPORATION OPERATIONS

Sec.

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AUTHORITY: 12 U.S.C. 1441b.

SOURCE: 54 FR 41950, Oct. 13, 1989, unless otherwise noted.

§ 1510.1 Definitions.

General. Unless another definition is provided in this subchapter, the following definitions will apply to terms used in this subchapter.

Act means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

Administrative expenses means costs incurred as necessary to carry out the functions of the Funding Corporation, including custodian fees; but does not include any interest on, or redemption premium with respect to, any obligation of the Funding Corporation or any issuance costs.

Bank or banks means a Federal home loan bank or all the Federal home loan banks.

Board means the Oversight Board established in section 21A(a)(1) of the Act.

Custodian fees means any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the Funding Corporation Principal Fund and any other expense incurred

in connection with the establishment or maintenance of the Funding Corporation Principal Fund.

Deficient bank means a bank whose allocation under section 21B(e)(5) of the Act exceeds the amount applicable to such bank under section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

Directorate means the Directorate of the Funding Corporation.

Excess amount means the amount by which a bank's required contribution pursuant to section 21B(e)(5) of the Act exceeds the maximum amount limitation applicable to such Bank pursuant to section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

FDIC means the Federal Deposit Insurance Corporation established pursuant to section 1 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, *et seq.*

Financing Corporation means the Financing Corporation established pursuant to section 21(a) of the Act.

FSLIC Resolution Fund means the FSLIC Resolution Fund established pursuant to section 11A(a)(1) of the Federal Deposit Insurance Act, as amended 12 U.S.C. 1811, *et seq.*

Funding Corporation means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

Funding Corporation Principal Fund means the separate account established under section 21B(g)(2) of the Act.

Issuance costs means issuance fees and commissions incurred by the Funding Corporation in connection with the issuance or servicing of any obligation of the Funding Corporation, and includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Funding Corporation in connection with the issuance of any obligation.

Net earnings means net earnings without reduction for chargeoffs or expenses incurred by a bank for the purchase of capital stock of the Financing Corporation or payments relating to

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the Funding Corporation required by the Board under sections 21B (e) and (f) of the Act.

Remaining bank means a bank that is not allocated an amount under section 21B(e)(5) of the Act that exceeds its maximum amount limitation applicable to such bank under section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

RTC means the Resolution Trust Corporation established pursuant to section 21A(b)(1)(A) of the Act.

§ 1510.2 General authority.

The Funding Corporation may exercise all authority granted to it by the Act and by its bylaws, whether or not specifically implemented by Board regulations, subject to the limitations and interpretations contained in this part and such regulations, orders and directions as the Board may prescribe.

§ 1510.3 Authorization of establishment of investment policies and procedures.

The Directorate may establish from time to time, with the approval of the Board, investment policies and procedures from time to time with respect to assets of the Funding Corporation which are not required to be invested in the capital certificates issued by the RTC and are not needed for current interest payments. These investment policies and procedures shall be consistent with the provisions of section 21B(g) of the Act.

§ 1510.4 Authority to issue obligations.

(a) Upon direction by the Board, the Directorate is authorized to cause the Funding Corporation to create and issue in one or more issues, one or more series of Funding Corporation bonds, notes, debentures or similar obligations in an aggregate principal amount up to the maximum permissible from time to time under section 21B(f)(1) of the Act and having such other terms and conditions as may be specified by the Directorate at the time or times of their issuance. Before any issue is offered for sale, the approval of the Department of Treasury shall be obtained pursuant to section 21B(h)(3) of the Act and 31 U.S.C. 9108.

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(b) The net proceeds of each obligation issued by the Funding Corporation shall be used in accordance with the provisions of section 21B(f)(4) of the Act.

§ 1510.5 Federal Reserve bank to be depositaries and fiscal agents.

The Federal Reserve banks are to act as depositaries for or fiscal agents or custodians of the Funding Corporation. Subject to approval by the Oversight Board, the Directorate may also authorize establishment of demand deposit accounts at one or more financial institutions.

§ 1510.6 Budget and expenses.

(a) The Funding Corporation shall annually submit to the Directorate by November 15, a budget of its proposed expenditures, including administrative expenses for the following year.

(b) By December 1 of each year the Directorate shall submit an approved budget to the Board for final approval.

(c) After such budget has been approved by the Board, the Directorate shall transmit a copy of the budget to each bank president.

(d) In the event that the Funding Corporation projects or anticipates incurring expenses which exceed its approved budget, then an amended budget shall be submitted for approval by the Board in the same manner as the original budget.

§ 1510.7 Billing of administrative expenses.

(a) All administrative expenses of the Funding Corporation shall be paid by the banks.

(b) The amount each bank shall pay shall be determined in the manner provided in section 21B(c)(7)(B) of the Act.

(c) On a periodic basis but not less than semiannually, the Directorate shall determine, based upon a method approved by the Board and in accordance with section 21B(c)(7)(B) of the Act, each bank's pro rata share of the Funding Corporation's administrative expenses, as approved by the Board pursuant to § 1510.6 of this part, and the Directorate shall bill each bank accordingly.

(d) Each bank shall remit its pro rata share of the administrative expenses

within ten (10) business days after receipt of the bill as provided by paragraph (c) of this section.

(e) The aggregate amount of administrative expenses for which the banks may be billed for any period, under a budget approved pursuant to § 1510.6 of this part, shall be adjusted as necessary to reflect any differences between such aggregate expenses projected for the period and those actually incurred in prior periods during the calendar year or to reflect any changes in the estimate of such aggregate expenses expected to be incurred in the coming period; however, in no event shall the aggregate of all bills issued to the banks exceed the budget, or the amended budget approved pursuant to § 1510.6 of this part.

§ 1510.8 Issuance expenses.

After receipt of the proceeds (less any discount, plus any premium) of any obligation issued by the Funding Corporation and prior to the purchase of capital certificates issued by the RTC, pursuant to section 21A of the Act, or refunding any previously issued obligation, pursuant to section 21B(f)(1) of the Act, the Funding Corporation shall deduct its issuance costs as budgeted in the budget approved by the Board.

§ 1510.9 Capitalization of Funding Corporation.

(a) *Funding projections.* (1) Not later than December 15 and June 15 of each year, the Directorate shall project how it will raise funds for the Funding Corporation (including the amount of funds needed from the banks) and pay interest on outstanding obligations of the Funding Corporation during the following year, specifically including the projected dollar amount to be raised and the projected settlement date(s). Not later than March 15, June 15, September 15, and December 15 of each year, the Directorate shall update its projections for the remainder of the year and confirm the dollar amount raised and the settlement dates and amount of interest paid in the preceding period.

(2) Not later than December 15 of each year, each bank shall submit to the Directorate a statement prepared

by an officer at such bank containing such bank's earning projections for the following year. Not later than March 15, June 15, September 15 and December 15 of each year, such officer shall provide to the Directorate an updated report containing the previous quarter's earnings and updating the projections for the remainder of the year.

(3) Not later than each December 20 and June 20, the Directorate shall submit the funding projections to the Board for review. Not later than March 20, June 20, September 20 and December 20 of each year, the Directorate shall submit the updated projections to the Board for review.

(4) Not later than December 31 and June 30, the Directorate shall notify each bank of the amount of projected funds needed by the Directorate from the banks, the aggregate amount available from all the banks and each bank's projected pro rata share calculated in accordance with the provisions of section 21B of the Act. In no event shall the amount projected to be requested from the banks in any given calendar year exceed the three hundred million dollar (\$300,000,000) maximum amount limitation set forth in sections 21B(e)(3)(B) and (C) of the Act, plus applicable amounts in section 21B(e)(3)(A) of the Act.

(5) Once the funding projections are approved by the Board, not later than December 31 and June 30 of each year, the Directorate shall provide the banks with projections of how it will raise funds for the Funding Corporation (including the amount of funds needed from the banks) and pay interest on outstanding obligations of the Funding Corporation during the following year, specifically including the projected dollar amount to be raised and the projected settlement date(s). Once the updated projections are approved by the Board, not later than March 31, June 30, September 30, and December 31 of each year, the Directorate shall provide the banks with a report updating its projections for the remainder of the year and confirming the dollar amount raised and the settlement dates and amount of interest paid in the preceding quarter.

(6) The projections required by this subsection shall not apply to amounts

required to capitalize the Funding Corporation prior to October 31, 1989.

(b) *Capital assessments of Federal home loan banks*—(1) *General.* (i) Upon direction by the Board, the Directorate shall require each bank to invest in nonvoting capital stock of the Funding Corporation so that the Funding Corporation may defease its obligations proposed to be issued pursuant to section 21B of the Act.

(ii) The banks collectively are directed to purchase, when and as instructed by the Directorate, in one or more issues, Funding Corporation nonvoting capital stock at a purchase price of \$1.00 per share. Such stock shall be subject to such terms and conditions as are prescribed in the bylaws of the Funding Corporation, as the same may be amended from time to time. The amount of stock which each bank shall be required to purchase within each issue shall be:

(A) As to the amount of Funding Corporation stock purchased pursuant to section 21B(e)(3) of the Act and Financing Corporation stock purchased pursuant to section 21(d)(3) of the Act, in the aggregate, up to the initial one billion dollars (\$1,000,000,000) in accordance with the ratios prescribed in section 21B(e)(4) of the Act.

(B) As to the amount of Funding Corporation stock purchased pursuant to section 21B(e)(3) of the Act and Financing Corporation stock purchased pursuant to section 21(d)(3) of the Act, in the aggregate, in excess of one billion dollars (\$1,000,000,000), in accordance with the ratios prescribed in section 21B(e)(5) of the Act.

(iii) (A) If the amount any bank is required to invest in capital stock of the Funding Corporation exceeds its maximum investment limitation as determined pursuant to section 21B(e)(3) of the Act, the Directorate is authorized to require each remaining bank to invest in such additional capital stock of the Funding Corporation as provided for in section 21B(e)(6) of the Act.

(B) The amount of Funding Corporation stock required to be purchased by the banks shall be determined by deducting, pursuant to sections 21B(e)(3)(A) and (B) of the Act, the amount of Financing Corporation capital stock that the banks are required

to purchase pursuant to section 21 of the Act. If the amount of Financing Corporation capital stock that the banks are required to purchase exceeds the annual three hundred million dollar (\$300,000,000) limitation on purchases of Funding Corporation capital stock prescribed by sections 21B(e)(3)(B) and (C) of the Act, then the amount of Financing Corporation capital stock purchased in excess of such limitations shall be credited in the following year or years, as the case may be.

(iv) The shares shall have a par value of \$1.00 per share and may be transferable at not less than par value only among the banks.

(v) Shares of Funding Corporation stock shall be issued in certificate or in book entry form. The Directorate shall establish procedures for appointing a registrar and a transfer agent.

(2) *Request for funds to capitalize the Funding Corporation.* (i) Approximately forty-five (45) days in advance of the date that funds are needed by the RTC, the Board shall advise the Directorate in writing of the amount of funds required and the due date.

(ii) The Directorate shall determine, according to a method approved by the Board, and in accordance with sections 21B(e)(4) and (5) of the Act, each bank's pro rata share of the amount needed to defease the obligations issued by the Funding Corporation in accordance with the provisions of section 21B of the Act. The Directorate shall notify each bank, in writing, at least 15 days in advance of the amount and due date of its pro rata share.

(iii) Each bank shall wire immediately available and finally collected funds to the Funding Corporation on the due date.

(iv) The time for the notice requirements shall not apply to requests for funds to capitalize the Funding Corporation made prior to October 31, 1989.

(c) *Industry assessments.* (1) The Funding Corporation is authorized to collect, with the approval of the Board of Directors of the FDIC, the assessments of SAIF members, pursuant to section 21B(e)(7)(A) of the Act, through a joint collection agent.

(2) The Funding Corporation, based upon projections of the amount needed

for the Funding Corporation Principal Fund and projections of the amounts available from the banks and from SAIF members' assessments, shall determine the amount of available bank funds pursuant to sections 21B(e) (3), (4), (5), and (6) of the Act and shall also determine the percentage of assessments on SAIF members needed, if any, to fund the Funding Corporation Principal Fund. In making the determination of the percentage of assessments needed from SAIF members, the Funding Corporation shall deduct the amount assessed, if any, by the Financing Corporation, pursuant to section 21B(e)(7)(A)(iii) of the Act and the limitations prescribed in section 21B(e)(7)(A) of the Act.

(3) Based upon the determination made under paragraph (c)(2) of this section, the Funding Corporation shall notify the FDIC, the Financing Corporation and the joint collection agent of the percentage of assessments from SAIF members it needs.

(d) *Receivership proceeds.* To the extent the amounts available pursuant to paragraphs (b) and (c) of this section are insufficient to fund the Funding Corporation Principal Fund, upon written request from the Directorate, the FDIC shall transfer funds to the Funding Corporation representing proceeds from liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships. Such written request shall state the amount of funds needed and the date by which the funds are needed.

§ 1510.10 Funding Corporation Principal Fund Reserve Account.

(a) Upon becoming a deficient bank, a bank shall set aside in a reserve account the amounts required by section 21B(e)(6)(D) of the Act.

(b) The balance in the reserve account, which shall not exceed the amount of the total deficiency of the deficient bank, shall be available for the sole purpose of purchasing capital stock from the remaining banks that was purchased on behalf of the deficient bank.

(c) Each quarter, each deficient bank shall, prior to any payment of dividends, set aside in the reserve account from net earnings and any reimburse-

ments received from other deficient banks an amount that shall be used to make the purchases of stock required under section 21B(e)(6)(C) of the Act. Pursuant to section 21A(e)(6)(D)(ii) of the Act, the Board shall not require that such amount exceed an amount equal to twenty percent (20%) of the net earnings of the deficient bank. Such limitation, however, shall not prohibit a deficient bank from reserving additional amounts, from reimbursements received from other deficient banks or from other sources, for the purpose of purchasing stock purchased on its behalf by remaining banks.

(d) Interest shall begin to accrue two (2) years after the investments under section 21B(e)(6)(A) of the Act are made on behalf of a deficient bank. Interest shall accrue on the deficient amount at a rate equal to the annual average cost of funds of all banks in the most recent year. Interest payments shall be made annually or quarterly in the manner described in paragraph (e) of this section. Such interest payments are not subject to the limitations on reserve accounts set forth in paragraph (c) of this section.

(e) Annually, not later than each January 31, all amounts set aside in the reserve account shall be remitted to the remaining banks in the amounts determined by the Directorate, in accordance with a method approved by the Board and in accordance with section 21B of the Act, and shall be remitted in the order that each investment was made on behalf of a deficient bank. Notwithstanding the first sentence of this paragraph (e), however, amounts set aside in the reserve account may be remitted quarterly, not later than the close of the month following each quarter, provided that the total amounts remitted with respect to any year shall be equal to what would have been remitted if a single annual payment were made as set forth in the first sentence of this paragraph (e).

(f) When appropriate, the Directorate shall direct a remaining bank to transfer the necessary shares of Funding Corporation stock to a deficient bank

upon receipt of funds disbursed from the deficient bank's reserve account.

[54 FR 41950, Oct. 13, 1989, as amended at 56 FR 57483, Nov. 12, 1991]

§ 1510.11 Interest payments and interest reserve account.

(a) The Directorate shall make a written request for funds to pay interest on obligations of the Funding Corporation from the following sources and in the following order:

(1) Earnings of the Funding Corporation not invested in the Funding Corporation Principal Fund.

(2) Proceeds from:

(i) The liquidating dividends and payments made on claims received by the RTC from receiverships to the extent such proceeds are determined by the Board to be in excess of funds presently necessary for resolution costs; and

(ii) Warrants and participations acquired by the RTC.

(3) To the extent funds from paragraphs (a)(1) and (2) of this section are not sufficient to cover the amount of interest payments due on obligations of the Funding Corporation, the banks shall pay the Funding Corporation each calendar year the aggregate amount as set forth in section 21B(f)(2)(C) of the Act.

(i) Each bank's individual share of such amount shall be as prescribed in sections 21B(f)(2)(C) (i) and (ii) of the Act. In instances where any bank(s) is (are) unable to fund interest payments in the amounts prescribed by section 21B(f)(2)(C)(ii) of the Act, out of retained earnings, the banks which have no such deficiency shall fund the amount of the aggregate deficiencies in accordance with the calculation set forth in sections 21B(f)(2)(C)(ii) (I) and (II) of the Act. Notwithstanding the preceding sentence, a bank's contributions for such interest payments on behalf of other bank(s) shall not be made to the extent it causes such bank to have deficit retained earnings.

(ii) Any bank on whose behalf interest payments were made under paragraph (a)(3)(i) of this section shall quarterly, prior to the payment of dividends, and after making the payments required by § 1510.10, excluding any interest payments made pursuant to § 1510.10(d), set aside in a reserve ac-

count separate from the reserve account required for reimbursements of capital contributions to the Funding Corporation, twenty percent (20%) of net earnings, or the amount of the deficiency if such deficiency is less than twenty percent (20%) of net earnings, which funds will be used to reimburse the banks that made payments on behalf of the bank(s) which was unable to fund its interest payments. Until such time as the deficiency amount has been repaid, the bank on whose behalf interest payments were made shall continue to set aside twenty percent (20%) of net earnings on a quarterly basis. Notwithstanding the foregoing, the amounts set aside in the reserve account pursuant to this paragraph (a)(3)(ii) and § 1510.10 of this part and pursuant to section 21(d) of the Act, in the aggregate, are not required to exceed twenty percent (20%) of net earnings.

(iii) Annually, not later than each January 31, all amounts set aside in the reserve account shall be remitted to the banks that made interest payments on behalf of another bank(s) in amounts determined by the Directorate. Banks which have made interest expense payments on behalf of other banks shall receive reimbursement in the order of the interest expense contributions made by such banks. In determining the amount due to each bank for interest payments made on behalf of another bank, the Directorate shall multiply the available funds in the reserve account by the percentage arrived at by dividing, for each separate deficiency—

(A) The cumulative amount of interest expenses paid by a bank on behalf of such bank; by

(B) The cumulative amount of interest expenses paid by all the banks on behalf of such bank for that deficiency.

(4) Any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund.

(b) To the extent that the funds from the sources identified in paragraph (a) of this section are insufficient, the Department of Treasury shall pay to the Funding Corporation such additional amounts as may be necessary to pay such interest, upon receipt of a certification from the Directorate, in a form satisfactory to the Department of the

Treasury. The certification at a minimum shall state the total amounts paid by the Funding Corporation from the sources listed in paragraph (a) of this section and the amounts necessary to make up the deficiency. Any amount paid by the Department of Treasury shall become a liability of the Funding Corporation to be repaid to the Department of Treasury upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

§ 1510.12 Request for funds for interest payments.

(a) Prior to the date that funds are needed by the Funding Corporation for interest payments pursuant to section 21B(f)(2) of the Act, the Directorate shall determine each bank's pro rata share in accordance with the provisions of section 21B(f)(2) of the Act and a methodology approved by the Board. The Directorate shall notify each bank in writing at least three business days in advance of such date of the amount and due date of payment of its pro rata share.

(b) Each bank shall wire immediately available and finally collected funds to the Funding Corporation on the due date.

[54 FR 41950, Oct. 13, 1989, as amended at 56 FR 57483, Nov. 12, 1991]

§ 1510.13 Reports to Board.

Within ten (10) business days of the close of each calendar quarter commencing with the quarter ended September 30, 1989, the Directorate shall submit to the Board a report for the previous calendar quarter stating:

(a) The number of shares of the capital stock of the Funding Corporation which the banks were required to purchase and the dates of the purchases;

(b) The types and amounts of securities purchased pursuant to section 21B(g) of the Act;

(c) The amount of any obligations issued during the quarter pursuant to section 21B(f)(1) of the Act and the basic terms and conditions of such obligations; the amount of any obligations proposed to be issued during the current quarter and any anticipated significant differences in the basic terms and conditions of those obligations from previously issued obligations; and

the aggregate amount of obligations issued as of the end of the last quarter and the maximum amount of obligations which the Funding Corporation was permitted to issue as of that date pursuant to section 21B(f)(1) of the Act;

(d) The amount of capital certificates purchased from the RTC during the last quarter and the aggregate amount purchased during all previous quarters and the percentage of all proceeds from obligations which the Funding Corporation had invested in the RTC as of the end of the last quarter;

(e) The aggregate amount assessed against the banks, the aggregate amount assessed against the SAIF members, and the aggregate amounts collected from the other specified sources;

(f) Any significant changes in the Funding Corporation's investment policies or any other developments that the Directorate deems significant which occurred during the last quarter or are expected to occur during the current quarter;

(g) The amount of funds distributed to remaining banks from the reserve accounts established pursuant to §§ 1510.10 and 1510.11 of this part; and

(h) Such other information as the Board may require.

§ 1510.14 Reports to Congress.

The Directorate and the Board shall prepare such reports as are necessary to enable the Board to comply with the reporting requirements set forth in section 21B(i) of the Act for submission of the reports to Congress and the President.

§ 1510.15 Review of books and records.

An office designated by the Board shall review the books and records of the Funding Corporation at least annually to determine whether the Funding Corporation is performing its functions in accordance with the provisions of section 21B of the Act and this part.

**PART 1511—BOOK-ENTRY
PROCEDURE**

Sec.

1511.0 Applicability.

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1511.2 Law governing rights and obligations

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of the Funding Corporation and Federal Reserve Banks; rights of any Person against the Funding Corporation and the Federal Reserve Banks.

1511.3 Law governing other interests.

1511.4 Creation of Participant's Security Entitlement; security interests.

1511.5 Obligations of Funding Corporation; no adverse claims.

1511.6 Authority of Federal Reserve Banks.

1511.7 Liability of the Funding Corporation and Federal Reserve Banks.

1511.8 Notice of attachment.

AUTHORITY: 12 U.S.C. 1441b.

SOURCE: 61 FR 66875, Dec. 19, 1996, unless otherwise noted.

§ 1511.0 Applicability.

The regulations in this part apply to Book-entry Funding Corporation Securities.

§ 1511.1 Definitions of terms.

In this part, unless the context indicates otherwise:

Act means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

Adverse Claim means a claim that a claimant has a property interest in a Book-entry Funding Corporation Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Book-entry Funding Corporation Security.

Book-entry Funding Corporation Security means a Funding Corporation Security in book-entry form that is issued or maintained in the Book-entry System. Solely for the purposes of this Part, it also means the separate interest and principal components of a Book-entry Funding Corporation Security if such security has been divided into such components as authorized by the Securities Documentation and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the Funding Corporation, on which Book-entry Funding Corporation Securities are issued, recorded, transferred and maintained in book-entry form.

Entitlement Holder means a Person to whose account an interest in a Book-

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entry Funding Corporation Security is credited on the records of a Securities Intermediary.

Federal Reserve Bank or Reserve Bank means a Federal Reserve Bank or Branch.

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry Funding Corporation Securities) and transfers book-entry Securities (including Book-entry Funding Corporation Securities).

Funding Corporation means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

Funding Corporation Security or *Security* means a Funding Corporation bond, note, debenture and similar obligations issued under section 21B of the Act.

Funds Account means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

Participant means a Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

Participant's Securities Account means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Funding Corporation Securities held for a Participant are or may be credited.

Person means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, the Funding Corporation, or a Federal Reserve Bank.

Revised Article 8 means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Revised Article 8 of the Uniform Commercial Code is incorporated by reference in this Part pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. Article 8 was adopted by the American Law Institute and the National Conference of Commissioners on Uniform State laws and

approved by the American Bar Association on February 14, 1995. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611. Copies are also available for public inspection at the Department of the Treasury Library, Room 5030, main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington DC 20220, and in the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington DC.

Securities Documentation means the applicable offering circular, supplement, or other documents establishing the terms of a Book-entry Funding Corporation Security.

Securities Intermediary means:

(1) A Person that is registered as a "clearing agency" under the Federal securities laws; a Federal Reserve Bank; any other Person that provides clearance or settlement services with respect to a Book-entry Funding Corporation Security that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

Security Entitlement means the rights and property interest of an Entitlement Holder with respect to a Book-entry Funding Corporation Security.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Funding Corporation Security,

as set forth in Federal Reserve Bank Operating Circulars.

§ 1511.2 Law governing rights and obligations of the Funding Corporation and Federal Reserve Banks; rights of any Person against the Funding Corporation and the Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the regulations contained in this part 1511, the Securities Documentation and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of the Funding Corporation and the Federal Reserve Banks with respect to:

(i) A Book-entry Funding Corporation Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Funding Corporation Securities; and

(2) The rights of any Person, including a Participant, against the Funding Corporation and the Federal Reserve Banks with respect to:

(i) A Book-entry Funding Corporation Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Funding Corporation Securities.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1511.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1511.4(c)(1), is governed by the law determined in the manner specified in § 1511.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 1511.1), then the law specified in paragraph (b) shall be the law of

that State as though Revised Article 8 had been adopted by that State.

§ 1511.3 Law governing other interests.

(a) To the extent not inconsistent with the regulations in this part, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a Security Entitlement.

(b) The following rules determine a "Securities Intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 1511.1), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Book-entry Funding Corporation Security is a Security Entitlement.

§ 1511.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Funding Corporation Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other

interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Funding Corporation and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, the Funding Corporation, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in §1511.2(b) or §1511.3. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a

clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§1511.5 Obligations of Funding Corporation; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in §1511.4(c)(1), for the purposes of this part 1511, the Funding Corporation and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Funding Corporation Security has been credited as the Person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor the Funding Corporation is liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Funding Corporation Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Funding Corporation Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Funding Corporation to make payments of interest and principal with respect to Book-entry Funding Corporation Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Funding Corporation Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry Funding Corporation Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in

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which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest, as directed by the Participant. The principal of such Securities shall be paid using the proceeds of the noninterest bearing instruments maintained by the Funding Corporation for such purpose.

§ 1511.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Funding Corporation to perform functions with respect to the issuance of Book-entry Funding Corporation Securities offered and sold by the Funding Corporation, in accordance with the Securities Documentation, and Federal Reserve Bank Operating Circulars; to service and maintain Book-entry Funding Corporation Securities in accounts established for such purposes; to make payments of principal and interest with respect to such Book-entry Funding Corporation Securities as directed by the Funding Corporation; to effect transfer of Book-entry Funding Corporation Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Funding Corporation.

(b) Each Federal Reserve Bank may issue Operating Circulars not incon-

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sistent with this Part, governing the details of its handling of Book-entry Funding Corporation Securities, Security Entitlements, and the operation of the Book-Entry System under this Part.

§ 1511.7 Liability of the Funding Corporation and Federal Reserve Banks.

The Funding Corporation and the Federal Reserve Banks may rely on the information provided in a Transfer Message, or other documentation, and are not required to verify the information. The Funding Corporation and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, other documentation, or evidence submitted in support thereof.

§ 1511.8 Notice of attachment.

The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.